

***United States Court of Appeals  
for the Second Circuit***



**JOINT APPENDIX**





# 76-7350

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IN THE  
**United States Court of Appeals**  
FOR THE SECOND CIRCUIT

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MEAT SYSTEMS CORPORATION,

*Plaintiff-Appellee,*

—against—

BEN LANGEN-MOL, INC., a New York corporation,  
HOMBURG, B.V. and KNUD SIMONSEN INDUSTRIES, LTD.,

*Defendants,*

—and—

BEN LANGEN-MOL, INC., a Delaware corporation,

*Applicant for Intervention-Appellant,*

—and—

CARL ADILETTI and STEPHEN ZITIN,

*Additional Defendants  
on Counterclaim-Appellees*

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**JOINT APPENDIX**

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PAGINATION AS IN ORIGINAL COPY



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Relevant Docket Entries

7-26-76

Filed Ben Langen-Mol affidavit and show cause order for intervention and preliminary injunction returnable at 11:30 a.m., Room 1105. Connor, J.

7-26-76

Filed Memorandum in opposition to motion of Ben Langen-Mol Inc., a Delaware Corporation to intervene and for a preliminary injunction with affidavit in support of.

7-28-76

Filed Memorandum endorsed on show cause order filed 7-26-76 for intervention. Motions denied on ground of laches for the reasons stated on the record on 7-27-76, without prejudice to renewal of the motion to intervene on regular notice of motion. So ordered. Knapp, J.

(1) pursuant to Rule 24(a) of the Federal Rules of Civil Procedure, granting Ben Langen-Mol, Inc., a Delaware corporation, leave to intervene as a party defendant in this action and serve its answer and counterclaims to the amended complaint herein;

(2) pursuant to Rule 65(a) of the Federal Rules of Civil Procedure, granting said intervening defendant preliminary injunctive relief with respect to its first and second counterclaims restraining plaintiff, additional defendants Adiletti and Zitin and all persons acting in concert with them from (i) making further use of confidential data and trade secrets belonging to said intervening defendant and (ii) infringing United States Letters Patent No. 3,934,860, by, among other things, consummating pending transactions with John Morrell & Co. and Garland Food Corporation; and

(3) granting said intervening defendant such other and further relief as to this Court may seem just and proper; and it is further

ORDERED, that sufficient cause having been shown, let service of this order, together with the papers upon which it was granted, be made upon the parties herein by delivering copies thereof to the offices of ~~the attorneys of record for said parties~~ *Bernard T. ...* within the Southern District of New York, on or before *...* o'clock on July 23, 1976, and such service shall be deemed good and sufficient; and it is further

*ordered that the order shall be  
sent for filing of clerk  
in this caption, and*



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ORDERED, that all answering papers shall be served upon the attorneys for said applicant for intervention by delivering copies thereof to their offices on or before 5 o'clock on July 26, 1976.

Dated: New York, New York  
July 23, 1976

S. W. C. C.  
U.S.D.J.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MEAT SYSTEMS CORPORATION,	:	
	:	
Plaintiff,	:	
	:	
-against-	:	
BEN LANGEN-MOL, INC., a New York	:	
corporation, HOMBURG, B.V. and	:	
KNUD SIMONSEN INDUSTRIES LTD.,	:	
	:	
Defendants,	:	
	:	
-and-	:	75 Civ. 5306 (WK)
BEN LANGEN-MOL, INC., a Delaware	:	AFFIDAVIT OF
corporation,	:	BEN G. LANGEN
	:	
Applicant for Intervention,	:	
	:	
-and-	:	
CARL ADILETTI and STEPHEN ZITIN,	:	
	:	
Additional Defendants	:	
on Counterclaim.	:	

----- x

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

BEN G. LANGEN, being duly sworn, deposes and says:

1. I am president of Ben Langen-Mol, Inc., a Delaware corporation, which maintains its principal place of business at 12 Edgeboro Road, Edgeboro Industrial Plaza, East Brunswick, New Jersey ("Belam-Delaware"). I make this affidavit, pursuant to Rule 9(c)(4) of the General Rules of this Court, in support of the application of Belam-Delaware for an order directing plaintiff and additional defendants Carl Adiletti and Stephen Zitin to show cause why an order should not be entered:

(a) pursuant to Rule 24(a) of the Federal Rules of Civil Procedure, granting Belam-Delaware leave to intervene

as a party defendant in this action and serve its answer and counterclaim herein; and

(b) pursuant to Rule 65(a) of the Federal Rules of Civil Procedure, granting Belam-Delaware preliminary injunctive relief with respect to its first and second counterclaims restraining plaintiff, additional defendants Adiletti and Zitin and all others acting in concert with them from (i) making further use of confidential data and trade secrets belonging to Belam-Delaware and (ii) infringing United States Letters Patent No. 3,934,860, pending the trial of this action.

A. Relationship between Defendant Ben Langen-Mol, Inc., a New York corporation, and Ben Langen-Mol, Inc., a Delaware corporation, Applicant for Intervention herein.

2. This action for injunctive relief, damages and a declaratory judgment was commenced by plaintiff against three defendants, among whom is defendant Ben Langen-Mol, Inc., a corporation organized under the laws of the State of New York in or about April 1974. (Said defendant is hereinafter referred to as "Belam-New York".)

3. From the time of its formation until on or about December 23, 1975, Belam-New York maintained its principal place of business at 142 East 42nd Street, New York, New York, and operated as the exclusive distributor in the United States of, among other things, the "Belam Meat Yield Improver", a meat processing machine manufactured by Ben Langen-Mol B.V., a corporation organized under the laws of The Netherlands ("Belam-Uden"). (Belam-Uden, Belam-New York and Belam-Delaware are hereinafter collectively referred to as "the Belam companies".)



4. On or about December 23, 1975, Belam-Delaware entered into a purchase transaction with Belam-New York under which Belam-Delaware acquired certain of the assets and assumed certain of the liabilities of Belam-New York. In substance, as a consequence of that transaction, Belam-Delaware succeeded to the business of Belam-New York, and Belam-New York ceased to be an operating company.

B. Product and Patents Involved

5. The Belam Meat Yield Improver is a device which maximizes product yield to a processor of meat products and represents a revolutionary development in the field of meat processing. It was developed over many years by defendant Homburg B.V. ("Homburg") and Belam-Uden. Perfection of the device, together with a process to obtain optimum product yield, required extensive field testing and other research and development at considerable expense to the Belam companies.

6. The apparatus known as the Belam Meat Yield Improver was patented in Europe in 1972 and since that time has been marketed successfully there by Belam-Uden, as exclusive licensee of Homburg.

7. Since April 1974, the U.S. Belam companies have marketed the Belam Meat Yield Improver in the United States.

8. The Belam Meat Yield Improver and the process employed by the device in its normal operation are covered by two United States patents discussed more fully below. These patents are central to the controversy before this Court.

9. On November 27, 1973, United States Letters Patent No. 3,778,134 (the "'134 Patent") was issued to Homburg covering the process employed by the Belam Meat Yield Improver in its normal operation. (A true copy of said patent is attached

hereto as Exhibit A.) That process is hereinafter referred to as "the patented process".

10. In or about April 1974, Belam-New York, upon its incorporation, became the exclusive licensee of Homburg under the '134 Patent. On December 23, 1975, pursuant to the purchase transaction referred to above, the exclusive license was acquired by Belam-Delaware.

11. On January 27, 1976, United States Letters Patent No. 3,934,860 (the "'860 Patent") was issued to Homburg covering, among other things, the apparatus known as the Belam Meat Yield Improver. (A true copy of said patent is attached hereto as Exhibit B.)

12. On or about January 27, 1976, Belam-Delaware became the exclusive licensee of Homburg under the '860 Patent.

C. Defendant Adiletti's Employment by Belam-New York

13. From the time of its incorporation in 1974 until December 23, 1975, I was president and a director of Belam-New York and have personal knowledge regarding its affairs during that period.

14. On or about July 1, 1974, shortly after the commencement of its business operations in this country, Belam-New York hired additional defendant Adiletti to act as its principal sales representative in the United States at an annual salary of \$18,900, plus expenses. Mr. Adiletti was later promoted to national sales manager at an increased salary and continued in that capacity until his sudden resignation in July 1975.

15. Immediately after the commencement of his em-



ployment Mr. Adiletti was given a thorough and intensive training course in the manufacture and technology of the Belam Meat Yield Improver and in the technology of the patented process. His training included, among other things, a trip of approximately one month's duration to Holland and Denmark to observe the manufacture and operation of the Belam Meat Yield Improver. During that period of time he was shown, among other things, all the research and development data developed by us over many years concerning the manufacture and use of the machine. Because he had an engineering background, Mr. Adiletti was able to master quickly this highly sophisticated body of technical data.

16. During the course of his employment by Belam-New York Mr. Adiletti was regularly given valuable confidential information regarding the Belam Meat Yield Improver and the patented process and, moreover, had complete access to all documents relating to every aspect of Belam-New York's business. Among other things, Mr. Adiletti had access to (a) Belam-New York's confidential list of actual potential customers for the Belam Meat Yield Improver, (b) technical know-how relating to the Belam Meat Yield Improver and certain improvements thereof, (c) patent studies conducted for Homburg, owner of the patents in issue, and (d) data concerning the cost of manufacturing and selling the Belam Meat Yield Improver.

17. As national sales manager of Belam-New York, Mr. Adiletti routinely received sales and trip reports prepared by Belam-New York salesmen. These reports set forth

the names of potential customers who had expressed an interest in purchasing the Belam Meat Yield Improver and other relevant data relating to attempted sales of the machine. Because of his position with the company Mr. Adiletti acquired intimate knowledge of the United States market for the Belam Meat Yield Improver and the nature and extent of the marketing efforts and plans of Belam-New York. Furthermore, Mr. Adiletti learned of the cost of manufacturing and selling the machines as well as the precise amount of Belam-New York's royalty payments to Homburg.

D. Formation of a Company by Mr. Adiletti to Copy and Exploit the Belam Meat Yield Improver

18. Sometime during 1975, Mr. Adiletti reached the conclusion that he could copy and exploit the Belam Meat Yield Improver for his own benefit. While still an employee of Belam-New York, he secretly entered into discussions with additional defendant Stephen Zitin to establish a new company which would manufacture and offer for sale under its own label a meat processing machine which was virtually an exact copy of the Belam Meat Yield Improver.

19. Mr. Adiletti had met Mr. Zitin during the course of his employment by Belam-New York. One of Mr. Adiletti's first customers in 1974 had been Sandy Mac Farms, a meat processor which purchased five Belam Meat Yield Improvers. Mr. Zitin was, and is today, general manager of Sandy Mac Farms. Mr. Zitin was, therefore, able to gain firsthand knowledge as to the superiority of the Belam Meat Yield Improver and the patented process compared to other machines and methods avail-



able to meat processors.

20. Upon information and belief, sometime during the spring of 1975, approximately nine months after Mr. Adiletti joined Belam-New York, he and Mr. Zitin commenced discussions for the purpose of establishing a new company to sell a pirated version of the Belam Meat Yield Improver in which they would be partners. Upon information and belief, Mr. Adiletti disclosed to Mr. Zitin substantial portions of the confidential information he had obtained during the course of his employment by Belam-New York, including cost data, technical know-how and marketing information. These gentlemen apparently concluded that they could make a great deal of money if they copied the Belam Meat Yield Improver and sold their device in competition with Belam-New York. This they proceeded to do.

21. On or about July 15, 1975, without prior warning, Mr. Adiletti submitted a letter of resignation as an employee of Belam-New York. (Although the suspicions of other employees had been aroused several weeks before, Mr. Adiletti had repeatedly denied that he was about to leave the company.) In his deposition in this action he admitted (page 81) that he had been conducting negotiations regarding the formation of plaintiff Meat Systems Corporation with Mr. Zitin for a period of at least six weeks prior to his resignation. Furthermore, he and Mr. Zitin had visited a manufacturer, S&S Sheet Metal of Philadelphia, Pennsylvania, which was producing copies of the Belam Meat Yield Improver for purchase by Sandy Mac Farms. These machines bear the Meat Systems nameplate and were invoiced by Meat Systems to Sandy Mac Farms for payment.

22. During his deposition on December 29, 1975, Mr. Adiletti admitted (pages 104-105) that the machines manufactured by S&S Sheet Metal were virtually identical to the Belam Meat Yield Improver and, in fact, had been literally copied from a Belam Meat Yield Improver. Mr. Adiletti's testimony was as follows:

Q You had an opportunity to examine the equipment that was being manufactured for Sandy Mac by S&S, did you not?

A Yes.

Q How did it compare with the equipment which was manufactured by Ben Langen-Mol, Inc.? Did it have a physical resemblance to the Belam machine?

A Yes.

Q Did it have any differences from the Belam machine?

A No differences that were easily detectible.

Q Well, what differences did it have, though not easily detectible.

A The finish was slightly different. Their units were of a polished material versus Ben Langen's, were vapor-blasted and had a dull finish to them.

Q Is that basically a cosmetic difference?

A All the differences were basically cosmetic differences versus dimension or design differences."

Furthermore, although Mr. Adiletti claims that he and Mr. Zitin later made alterations in the machine being produced by S&S, he conceded (page 110) that the machine being sold by Meat Systems is a "modified version" of the Belam Meat Yield Improver.



23. In his deposition Mr. Adiletti denied, of course, that when he resigned as our employee, he copied or removed any of our records or documents. He also denied that he later misused for his own benefit any of the information he obtained during the course of his employment concerning the machines or our customers. I respectfully submit, however, that the conclusion is inescapable (a) that several weeks before Mr. Adiletti left our employ, he and Mr. Zitin agreed to and did form Meat Systems for the purpose of copying the Belam Meat Yield Improver and selling it in competition with the Belam companies and (b) that Mr. Adiletti purposely remained in our employ for several weeks in order to enable him to appropriate whatever valuable information he could obtain. The following examples are illustrative:

(1) The picture which appears on the cover of one of plaintiff's advertising brochures (attached hereto as Exhibit C) is a picture of a Belam Meat Yield Improver taken at Belam-Uden's plant in Holland. The 8-1/2 by 10 inch glossy print of this picture mysteriously disappeared from Belam-New York's files at or about the time of Mr. Adiletti's departure.

(2) Plaintiff's advertising brochure depicting the dimensions of its machine is a reproduction of a diagram of the Belam Meat Yield Improver, as is apparent from a comparison of one of plaintiff's advertising brochures with one of Belam's, copies of which are attached hereto as Exhibits D and E.

24. The dishonest motives of Messrs. Adiletti and Zitin are shown by the circumstances surrounding the formation of Meat Systems and its immediate sale of virtual copies of the Belam Meat Yield Improver to sales prospects identified

in our customers' lists. First, in his deposition, Mr. Adiletti admitted (pages 114-115) that he joined Meat Systems two days after he submitted his resignation, that he immediately became an equal 50% shareholder with Mr. Zitin and that each of them invested the total sum of \$1,000 in their new venture. (In contrast, it should be noted that the Belam companies had invested as of that date literally millions of dollars in the development, production and marketing of the Belam Meat Yield Improver.) Furthermore, Meat Systems' principal place of business is located in the home of Mr. Zitin, where its records are maintained. With the possible exception of Mr. Adiletti's home, plaintiff has no other place of business. In substance, Meat Systems is as transitory as its two principals. It does not maintain any manufacturing facilities. It orders its machines on a piecemeal basis from companies like S&S Sheet Metal after an order has been obtained, and its principal asset seems to be its advertising materials and the information gained from the Belam files. I am informed and believe that Meat Systems does not retain its earnings and that it represents little more than a corporate shell.

E. Business Activities of Plaintiff

25. Immediately after Mr. Adiletti joined forces with Mr. Zitin as a partner in Meat Systems, they embarked on a two-pronged strategy to reap quick profits based on the confidential information Mr. Adiletti had obtained while employed by us. First, they immediately contacted many of the customers of Belam-New York and offered to sell them an apparatus virtually identical to the Belam Meat Yield Improver, but at a price sub-



stantially below that at which our machine was generally offered for sale. (They were, of course, able to do this, because they had not incurred any research or development costs and did not have to conduct any marketing studies.) Second, they immediately retained an attorney to institute litigation against Homburg and Belam-New York in order to intimidate these parties into acquiescing in their unlawful conduct, and they caused this lawsuit to be commenced in October 1975.

26. Because an apparatus patent covering the Belam Meat Yield Improver had not yet been issued, we were unable to take any effective legal action to put a halt to the activities of Messrs. Adiletti and Zitin until we learned of a sale by Meat Systems of one of its machines, the normal use of which would necessarily infringe the already patented process.

27. In or about November 1975, we learned of several such sales and promptly brought that information to the attention of Homburg, which was contractually obligated to prosecute infringers of the patents relating to the Belam Meat Yield Improvers. Thereafter, Homburg instructed its counsel in the United States to prosecute infringers of the patents. Upon information and belief, Homburg's counsel corresponded with all persons thought to be infringing the patents and eventually commenced actions against two infringers after they were unable to reach a satisfactory accord with them. I am informed that these actions, Homburg B.V. v. Bryan Packing Company (Civ. No. EC 76-598) and Homburg B.V. v. Baltz Brothers Packing Co. (Civ. No. 76-133-NA-CV), are presently pending in the United States District Court for the Districts of Mississippi and Middle

Tennessee, respectively, and that the cost of defending these actions is being paid by Meat Systems pursuant to contractual agreements with these customers.

F. Reasons for the Present Application

28. Several days ago we learned that Meat Systems had obtained purchase orders for 135 of its machines from John Morrell & Co. of Chicago, Illinois ("Morrell"), and Garland Food Corporation of Dallas, Texas ("Garland"), for an aggregate purchase price of approximately \$550,000. Both these companies had previously purchased the Belam Meat Yield Improver, and negotiations were actively being conducted with them for further sales.

29. Mr. Adiletti was fully familiar with our sales efforts at Morrell, a major meat packer, while he was out national sales manager and undoubtedly also learned at the same time of our continuing interest in Garland.

30. As Mr. Adiletti well knows, the U.S. Belam companies have conducted an intensive sales campaign with Morrell over the last two years. In November 1974 we delivered two meat yield improvers to Morrell's Sioux Falls, South Dakota plant for testing. Other machines were delivered to Morrell's plant at East St. Louis, Missouri, and were tested during the summer of 1975. These tests were favorably received by the principal operating officers of Morrell. Further tests were conducted at the Sioux Falls plant from August 1975 through November 1975, and, as a result, Morrell purchased seven Belam Meat Yield Improvers.

31. Because of the satisfaction expressed by Morrell management, we had every reason to believe that



we would obtain a further order for over 100 machines which would represent one of the most substantial orders ever obtained by the Belam organization. Nonetheless, in the last several days we have been informed by representatives of Morrell that Morrell has placed an order for 125 meat yield improvers with Meat Systems at a unit price of \$4,000. When we inquired why Morrell had chosen to purchase its machines from Meat Systems, we were advised that the machines had been sold on the basis that they would provide precisely the same performance as the Belam Meat Yield Improver but could be purchased at a lower cost. The exact words of Mr. William Lloyd, Vice-President of Operations of Morrell, when he told us that we had lost this order were that, "Since the machines [Meat System's and Belam-Delaware's] are identical, we are buying strictly on price."

G. Infringement of the '860 Patent

32. I respectfully submit that it is beyond dispute that the meat yield improver being sold by plaintiff infringes the '860 Patent, of which Belam-Delaware is the exclusive licensee. It appears that plaintiff has been selling its machine to our customers on the basis that it is virtually identical to our machine and will provide the same high degree of performance in maximizing product yield. It is not surprising that plaintiff can make that representation, since its device is a copy of the Belam Meat Yield Improver.

33. I have had plaintiff's machine inspected and have personally studied pictures and drawings of it. (Attached hereto as Exhibit F is a comparison sheet showing a picture and

drawing of plaintiff's machine taken from plaintiff's advertising materials and a diagram of the apparatus which appears on sheet 2 of the '860 Patent. As the developer of the Balam Meat Yield Improver, I can confirm (a) that plaintiff's machine is virtually identical to our machine and (b) that both are embraced within the claims of the '860 Patent (see Exhibit C), of which I am a co-inventor.

34. The first claim of the '860 Patent is:

"Apparatus for the treatment of meat products, comprising:

- (a) a rectangular container with rounded edges;
- (b) stirring means for subjecting all of the meat chunks retained in said container to a stirring movement, said stirring means comprising:
  - (i) a stirring shaft,
  - (ii) a plurality of stirring blades affixed to said stirring shaft at angular spacings thereabout and at different levels thereon, each of said blades comprising a body which is symmetrical relative to its longitudinal axis and has flat upper and lower surfaces and rounded side walls, said rounded side walls causing horizontal and vertical components of movement of the meat chunks, the horizontal width of the blade perpendicular to its longitudinal axis first increasing, starting from the shaft up to a maximum substantially at half the radial blade length and thereafter decreasing again, and
  - (iii) drive means connected to said stirring shaft for supplying sufficient power to said shaft to impart said horizontal and vertical components of movement to chunks of meat filling said container; and
  - (iv) support means connected to said stirring means for supporting said stirring means such that said stirring shaft and said stirring blades are suspended within said container."

I respectfully submit that the Meat Systems machine corresponds to every recitation of the first claim of the '860 Patent and is an unlawful infringement of that patent.



H. Need for Immediate Relief

35. The Morrell account is vital to the future of Belam-Delaware. Over the years we have spent thousands of dollars to convince Morrell management of the superiority of our patented process and machine. We have flown representatives from Europe to meet with Morrell management at various locations throughout the United States, and we have spent considerable time with Morrell analyzing and recommending changes in their operations, a number of which have been adopted. Among other things, we have disclosed to Morrell employees substantial technical know-how so that it can maximize product yield. Moreover, in addition to our substantial marketing expenditures, we have also incurred the cost of shipping our machines to various Morrell locations and installing them for testing purposes. These substantial sums were spent by us in the expectation that Morrell would purchase not less than 100 additional Belam Meat Yield Improvers at an approximate cost of \$500,000.

36. The significance of the Morrell order is shown by the fact that, since the Belam Meat Yield Improver was first marketed in this country two years ago, a total of about 400 Belam Meat Yield Improvers have been sold. The Morrell order, therefore, would represent a significant increase in total sales and would permit us to begin to recoup our heavy research and development, marketing and patent royalty costs.

37. Unless plaintiff and additional defendants Adiletti and Zitin are restrained from using our confidential data and infringing our patent, Belam-Delaware will suffer irreparable injury. We have spent enormous sums of money to

persuade American meat processors of the superiority of our product, and we have demonstrated that we have the experience and know-how to assist them in obtaining optimal benefits from the machine. Meat Systems, with its thin capitalization and complete absence of any research organization, will undermine confidence in the marketplace in this device.

38. More significantly, Meat Systems has been able to gain a competitive advantage over Belam-Delaware solely through unlawful means. It is able to offer its machines at a lower cost to our customers because it has not had to incur any of the substantial costs associated with the development of a new product. Moreover, unlike Belam-Delaware, it does not pay any royalties to the owner of the applicable patents. Having invested nothing in developing its machine, having incurred no expense in developing the market for its machine, having obtained at no cost confidential technical data relating to the operation of the machine, Meat Systems is now poised to deprive Belam-Delaware of the financial rewards which it has earned through its pioneering efforts.

39. There are further substantial reasons why this Court should enter a preliminary injunction restraining further infringement of the '860 Patent and, more specifically consummation of the Morrell and Garland transactions. These sales are necessary to the continued financial wellbeing of Belam-Delaware, which has already been seriously adversely affected by the sales efforts of Meat Systems. Customers and potential customers of Belam-Delaware, attracted by the low sales price for the Meat Systems machine, have become increasingly reluctant to purchase the Belam Meat Yield Improver with



the result that Belam-Delaware has been unable to generate sufficient sales revenues to meet its overhead burden and continue its research and marketing programs. Unless Belam-Delaware can continue to sell its equipment in the United States, it will be forced in the near future to discontinue its operations.

40. Furthermore, even if Belam-Delaware were to prevail at trial, it is unlikely that it will be made whole by a judgment for damages. Meat Systems is thinly capitalized, and it appears that the profits from its sales of equipment are being withdrawn from the business. Since Messrs. Adiletti and Zitin have knowingly copied the Belam Meat Yield Improver and have appropriated confidential information belonging to Belam-Delaware, it is reasonable to infer that they have anticipated that a judgment would ultimately be obtained against them and have acted accordingly.

41. A copy of the proposed answer of Belam-Delaware is annexed hereto as Exhibit G.

#### Conclusion

42. It is respectfully submitted that the Court should grant the relief sought on this application. In its Fifth and Tenth Causes of Action plaintiff seeks a declaratory judgment that the '134 and '860 Patents are invalid. These patents are vital to the business of Belam-Delaware, and as exclusive licensee under each patent, Belam-Delaware is entitled to intervene as of right to protect its interests and assert such claims as it might have against plaintiff and additional defendants Adiletti and Zitin arising out of infringement of those patents. So far as Belam-Delaware's application for

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preliminary injunctive relief is concerned, it will suffer immediate, irreparable harm unless plaintiff and additional defendants Adiletti and Zitin are restrained during the pendency of this action from continuing their infringement of the '860 Patent and from reaping the benefits of their unlawful conduct. Accordingly, it is respectfully requested that the relief sought herein be granted.

Sworn to before me this  
23rd day of July, 1976

\_\_\_\_\_  
Ben G. Langen

\_\_\_\_\_  
Notary Public



United States Patent (19)  
Michels et. al.

(11) 3,775,134  
(45) Nov. 27, 1973

[54] PROCESS FOR PRESERVING HAMS AND  
PICNICS

[75] Inventors: Paul W. Michels, Plasmolen-Mook;  
Arnold Heun, Oosterbeek, both of  
Netherlands

[73] Assignee: Homburg N.V., Cuyk, Netherlands

[22] Filed: June 20, 1969

[21] Appl. No.: 835,235

[30] Foreign Application Priority Data  
June 28, 1968 Netherlands..... 6809250

[52] U.S. CL..... 426/231, 426/392

[51] Int. CL..... A23b 1/00, A23b 1/02

[58] Field of Search..... 99/159, 187, 254,  
99/255, 256, 257

[56] References Cited  
UNITED STATES PATENTS

3,076,713 2/1963 Maas..... 99/159 X

Primary Examiner—Hyman Lord  
Attorney—Browdy and Neimark

[57] ABSTRACT

A process for preserving hams and picnics, wherein brine is injected into hams or picnics in the deboned or non-deboned state. After the brine injection the hams or picnics are placed in a container and subjected therein to a continuous or intermittent agitating movement. Finally they are canned in pickled and deboned condition.

11 Claims, No Drawings

3,775,134

# PROCESS FOR PRESERVING HAMS AND PICNICS

This invention relates to a process for preserving hams and pork shoulders (hereinafter called "picnics"), wherein brine is injected into the hams or picnics which may have been deboned already or are deboned thereafter, and the hams or picnics are canned in deboned and pickled condition and to hams and picnics so processed.

Many processes of the above class have been described in patent literature, and all of these have in common that they show the disadvantage that an excess of brine is used which is removed again in a later stage of the process. This also removes some meat protein from the product which at that time is not yet completely germ-free, because it is extracted into the brine solution. Accordingly, the re-use of this solution is not entirely safe. More specifically, the following patents may be mentioned in this respect:

German Pat. No. 667,930. According to this patent the meat is centrifuged after injection of the brine, and the liquid pressed out of the meat in this operation, and containing a low salt content, is replenished and re-used. It should be mentioned in this respect that for the centrifuging treatment the pieces of meat or the like have to be packed in nettings or similar enclosures, which is a rather cumbersome labour. In practice this process has not found acceptance; German Pat. No. 941,949 which will be discussed hereinafter calls the success of the above process is questionable.

This German Pat. No. 941,949 also seeks a solution to the problem of removing again the excess of brine used in the injection treatment, and simultaneously arriving at a thorough distribution of the brine throughout the meat. To this end it is proposed to expose the meat to a subatmospheric pressure in a vacuum kettle after the injection of the brine, whilst under the influence of the air of the atmosphere, a movable bottom is pressed against it. This process has been tried in practice by the present inventors, but it did not yield a well pickled product, whilst moreover the loading and unloading of the vacuum kettle is rather labor-consuming again.

A similar vacuum treatment is proposed in German Pat. No. 816,344, according to which, however, the meat is not pressed with a movable bottom, but is kept in constant movement.

Still another variation is found in German Pat. No. 715,763. This patent proposes to subject the meat first to the injection treatment, and to place it then in a bath of brine. In this bath it is exposed to acoustic vibrations. It will be clear that in this process the meat is exposed to osmotic and bacteriological actions which are difficult to control.

According to French Pat. No. 1,465,421 the meat, after injection of the brine, is also placed in a bath of brine. In this bath it is exposed to a rotating movement.

U.S. Pat. No. 3,006,767 discloses a complicated apparatus, wherein meat which has previously been injected with brine can be treated in order to distribute the brine throughout the meat and to press out the excess of brine.

In actual practice methods are used which are related to some of the processes discussed hereinabove. These may be summarized as follows:

1a. Hams and picnics are treated with a brine of usual composition by injection into the vein and/or directly into the meat, stored in a brine of usual composition for one or more days, and then stored without brine at a low temperature, e.g. 4°-8°C, for one or more days, thereafter the hams or picnics are deboned and cut, packed in cans and made non-perishable to a greater or lesser degree by heating.

1b. Hams and picnics are processed as in 1a, but before canning they are placed one or more times in a container which is brought into a rotating centrifugal movement.

2a. Hams and picnics are deboned and cut, and then brine is injected with a brine injector into the meat, which optionally has been provided with a permeable enclosure (e.g. nettings); thereafter, the product may or may not be stored in brine, for example for 1 day (or shorter or longer), and then the product is canned and made non-perishable for a shorter or longer time by heating.

2b. Hams and picnics are processed as in 2a, but before canning they are placed one or more times into a container which is brought into a rotating centrifugal movement.

The advantage of method 1b over 1a and of method 2b over 2a is that it decreases the quantity of separated moisture, called "yield", when the ham or picnic is heated in a can or the like, whilst all properties of a so processed ham or picnic are improved. All above-mentioned methods have, however, the common disadvantage that they are cumbersome, and require many processing stages and much time. Moreover, the properties of the hams or picnics obtained according to all the above-described methods, e.g. the already mentioned yield, as well as the firmness and the desired suiting of the shape to that of the can, are not satisfactory in all respects. Furthermore, also these methods which are used in actual practice show the drawback that an excess of brine is injected which during the aftertreatment leaves the meat again and carries along meat protein.

An object of this invention is to provide a process for preserving hams and picnics which substantially overcomes the above disadvantages and drawbacks, and yields improved products having desirable properties.

A further object is to provide the above improvements with a process which is much simpler than the processes used up till now in actual practice.

Other objects, features and advantages of this invention will become apparent from the following description.

Surprisingly, it has now been found that hams and picnics of outstanding properties are obtained, if one uses a modification of the known processes, and that thereby the pickling process can be controlled so well that during the aftertreatment no or substantially no solution is removed from the meat anymore.

This invention provides a process for preserving hams and picnics, comprising injecting brine into the hams or picnics, which may have been deboned previously, and canning them in deboned and pickled state, said process being characterized by the fact that after the brine injection and before the canning, a plurality of the injected hams or picnics are stored in a container, and subjected therein to a continuous or intermittent stirring movement at atmospheric pressure.



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The stirring, which can be carried out with a conventional stirring device or the like, need not be continuous, but can also be intermittent, as mentioned already, and in that case it can be carried out at regular or irregular time intervals. The time of this stirring treatment can be restricted to 24 hours. This means that about 24 hours after the injection of the brine, a ham or picnic can be canned already, as a result of the process according to the present invention.

According to one embodiment the hams and picnics are first deboned and cut; then brine is injected with a brine injector, and subsequently the hams or picnics are placed in a container, containing no brine, wherein they are moved with a turning stirring device until the hams are cured and pliable for cans. According to another embodiment the hams or picnics are first treated with brine by injection into a vein, thereafter deboned and cut, and then placed into a container, and subjected to the abovementioned treatment.

Compared with the known methods, as discussed in sub 1a, 1b, 2a and 2b, the present process shows several advantages:

- a. The ham or picnic prepared according to the present process shows a lower yield or exudation, and the pliability of the ham or picnic suits itself better to assuming the shape of the can. Thus, hams or picnics which are packed in square cans also assume a square shape adapted to the can. This means that when slices are cut from a ham or picnic prepared according to the present process, almost all slices will assume the desired square shape. This is of particular importance, because a very large part of the hams and picnics packed in square cans is cut into slices.
- b. The so prepared ham or picnic has a better firmness; each slice per se shows an improved cohesion, and disintegrates to a lesser extent. The slices are more compact and firm.
- c. The number of processing stages decreases by 20 to 33 percent.
- d. The overall processing room which is necessary has become considerably smaller, because the room, wherein the hams or picnics are temporarily stored without brine is now also used as processing department.
- e. The conveyance of raw materials has decreased considerably.
- f. The total investments in machines and conveyance equipment is lower.
- g. The dwelling time in the plant decreases so that the money loss due to stockpiling is decreased.
- h. The uniformity of the final product is improved and the quality is more constant.
- i. The use of brine decreases by about 10 percent.
- j. Because in the process of the invention substantially no brine is lost from the treated hams and picnics by dripping out or the like, which brine also contains a small part of the valuable meat protein, more protein is present in the hams and picnics processed according to this invention.

The following example is for the purpose of illustrating the process of this invention, it being understood

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that the invention is not restricted to materials and conditions used in said example.

#### EXAMPLE

600 kg of deboned and cut hams or picnics are injected with 15 percent of brine with the aid of a brine injector. Thereafter, they are placed into a container having a length and width of 95 cm each and a height of 85 cm. In this container they are stirred for 5 minutes per hour with the aid of a stirring device of such a construction that the entire contents of the container can be moved.

After about 24 hours the hams or picnics are quite pliable and are then removed from the container, canned and further processed in the usual way.

What I claim is:

1. A process for preserving hams or picnics consisting of the steps of (a) injecting substantially the required amount of brine for pickling into the hams or picnics (b) storing a plurality of the hams or picnics after said injection in a container without additional brine and at atmospheric pressure, and at the same time subjecting them therein to an at least intermittent stirring movement of 3-60 minutes for each hour of storing until pickled and pliable and (c) canning the so treated hams.
2. The process of claim 1, wherein said movement in step b is continuous.
3. The process of claim 1, wherein said movement in step b is intermittent.
4. The process of claim 1, wherein the storing is for approximately 24 hours.
5. The process of claim 3, wherein the stirring is for approximately 5 minutes of each hour of storing.
6. The process of claim 5, wherein the storing is for approximately 24 hours.
7. A process for preserving hams according to claim 1, wherein the hams are deboned after step a and before step b.
8. The process of claim 1, wherein the hams or picnics are deboned before step a.
9. The process of claim 8, wherein the stirring is intermittent.
10. The process of claim 9, wherein the stirring is for approximately 5 minutes of each hour of storing and the storing is for approximately 24 hours.
11. A process for treating a ham or picnic, consisting of the steps of
  - a. injecting substantially the required amount of brine, on the order of about 15 percent, into said ham or picnic;
  - b. placing said brine injected ham or picnic into a container without additional brine and at atmospheric pressure, and pickling said ham or picnic for a period on the order of about 24 hours while simultaneously stirring for approximately 5 - 60 minutes for each hour of pickling; and
  - c. removing said brine injected ham or picnic from said container after it has become pickled and pliable, and canning the so treated ham or picnic

United States Patent [19]  
Michels et al.

[11] 3,934,860  
[45] Jan. 27, 1976

[54] APPARATUS FOR THE TREATMENT OF  
MEAT PRODUCTS

3,318,583 5/1967 Wright..... 259/122  
3,488,018 1/1970 Staal..... 259/108

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[22] Filed: Apr. 13, 1973

[21] Appl. No. 350,746

[57] ABSTRACT

[30] Foreign Application Priority Data  
Apr. 13, 1972 Netherlands..... 7204990

[52] U.S. Cl. .... 259/108; 416/223

[51] Int. Cl.<sup>2</sup> ..... B01F 7/16

[58] Field of Search ..... 259/122, 121, 111, 108,  
259/107, 106, 103, 102, 67, 66, 65, 64, 43,  
259/42, 41, 40, 24, 23, 22, 21, 8, 7, 6, 5;  
99/348

A method for preparing non-perishable shaped meat products including ham products with fat and rind, involves subjecting chunks of meat, with or without fat or rind, to a stirring treatment which includes both horizontal and vertical components of movement. The meat is then molded, heated and packed. An apparatus for providing the stirring motion includes a container with a vertical shaft and non-perpendicular blades attached thereto.

[56] References Cited

UNITED STATES PATENTS

2,637,912 11/1953 Liebman ..... 259/107

2 Claims, 4 Drawing Figures

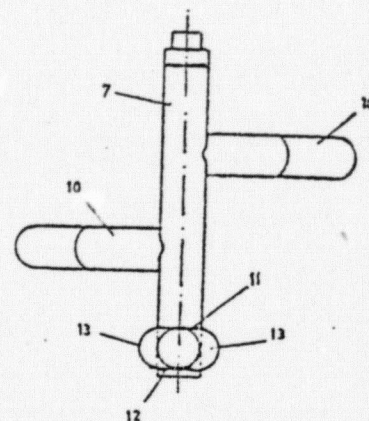
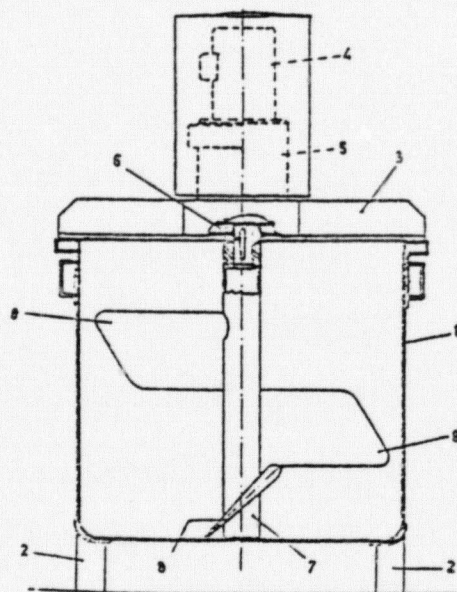




FIG. 3

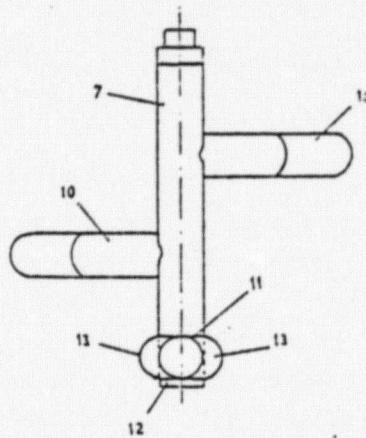
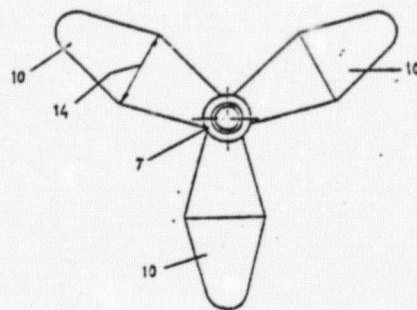


FIG. 4



U.S. Patent Jan. 27, 1976 Sheet 1 of 2 3,934,860

FIG. 1

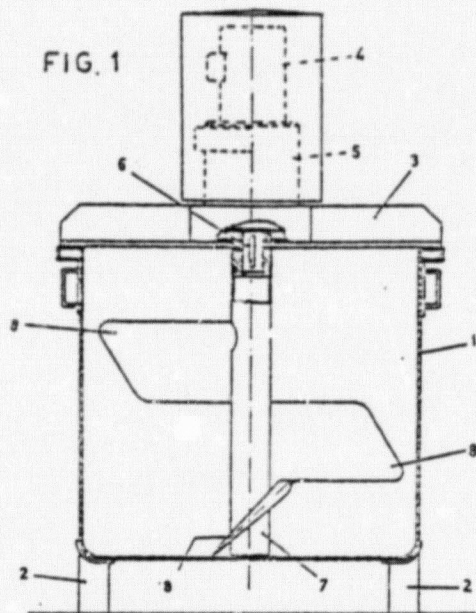
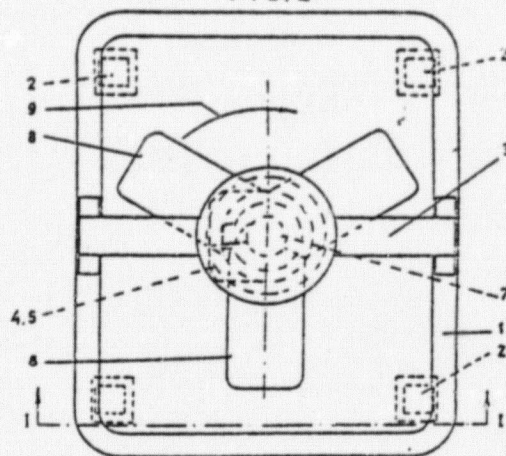


FIG. 2





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# APPARATUS FOR THE TREATMENT OF MEAT PRODUCTS

## CROSS-REFERENCE TO RELATED APPLICATION

The present application is an improvement over the apparatus disclosed in U.S. application Ser. No. 835,235 filed June 20, 1969, now U.S. Pat. No. 3,775,134 the entire contents of which are hereby incorporated by reference.

## FIELD OF THE INVENTION

The present invention relates to a method and apparatus for treating meat for storage in a shaped form and, more particularly, to an improved method of stirring deboned and brine-injected meat products to obtain a high quality product.

## BACKGROUND OF THE INVENTION

The U.S. patent application Ser. No. 835,235, now U.S. Pat. No. 3,775,134 describes a method for preparing cured shaped meat products wherein meat products such as hams or picnics, after deboning and injecting brine therein, are stored in a container wherein they are subjected to a stirring movement, whereafter the thus treated meat products are further finished, e.g. canned and heated.

This method constituted a great improvement relative to methods which were previously used, wherein the meat had had to be treated in a rigorously operating mixing apparatus or rotary churn, usually in vacuum. The method using a stirring operation not only permits an important simplification of the prior treating process, but, moreover, products of considerably better quality are obtained. This is the reason why the above-mentioned method has found wide acceptance in many countries within a very short time.

According to the U.S. Pat. application No. 3,775,134 the stirring operation may be carried out continuously or intermittently and according to the example described in that application the stirring takes place for 5 minutes per hour during 24 hours. In practice shorter durations of treatment may now and then suffice, e.g. about 18 hours. For carrying out the method an open container is used having stirring means therein which may be usually connected to the container. In all embodiments marketed up until now, this stirring means comprises a vertical shaft having secured to it in perpendicular relation one or more stirring blades, usually three or four, which are offset in angular position and in height with respect to each other. Of course a driving mechanism is connected for the stirring means and the assembly is usually provided with a time switch mechanism so that the stirring means is switched into operation at predetermined points of time and operates during a predetermined period of time. The stirring treatment is carried out at a moderate rate of speed, usually 20-30 revolutions per minute. This treatment does not substantially increase the temperature of the meat.

Notwithstanding the commercial success of this method using prior apparatus not all desired products can be manufactured thereby. Generally hams and picnics, which are canned or packed in some other way in molded form, are sold in three qualities, i.e. without fat and rind, with fat and without rind, and with fat and rind. The above discussed method can only be carried out with hams and picnics stripped of fat and rind by

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cutting these off and this means that only the most expensive quality of said products can be prepared by this method. For other qualities, up until now one had to go back to the older methods with churning or the like (U.S. Pat. No. 3,076,713) which are much more troublesome.

## SUMMARY OF THE INVENTION

Surprisingly it has now been found that the processing of any meat product, including hams and picnics with fat or with fat and rind, is indeed possible according to the method of U.S. Pat. No. 3,775,134 using stirring, provided that special measures are applied which result in a somewhat longer and less intense treatment than was usual. This is particularly surprising since the method according to the U.S. Pat. No. 3,775,134 meant already a much less intense treatment than the treatments according to U.S. Pat. No. 3,076,713, so that especially for the processing of hams and picnics with fat and rind, no success could have been expected from a still less intense treatment. Moreover, it appears that the method according to the present invention leads in all cases, e.g. also with hams and picnics without fat and rind, to a product having a better structure than up until now was obtained with the stirring method using prior apparatus according to the U.S. Pat. No. 3,775,134.

The invention provides an apparatus for carrying out a method for the preparation of cured shaped meat products wherein meat products, which have been deboned (if necessary) and injected with brine, are stored in a container and are subjected therein to a stirring movement, whereafter the stirred meat products are molded, heated and packed (e.g. by canning), said method being characterized in that the stirring operation is carried out with the use of a stirring means which during the stirring imparts simultaneously a vertical component of movement to the meat products.

In accordance with a particular embodiment, pork hams and shoulders with fat or with both fat and rind are stirred in this way continuously during 24-48 hours with 1-5 revolutions per minute.

When processing other meat products, such as hams and picnics without fat and rind, the meat structure is retained much better than in the known method. Although in this specifically mentioned case the duration of the treatment is somewhat longer, this is more than compensated by the improvement of the quality.

Generally, any meat product may be processed which is desired to be obtained in molded form in some package, such as a tin, can or a plastic bag. Besides hams and pork shoulders the following meat products may be mentioned as non-limiting examples:

Beef; lamb; tongues and other offals; poultry, including chicken and turkey; loins of pork; gammons and fore-ends (which should not be pickled with brine, but with phosphate solution); and roast pork (which should be pickled with dilute phosphate solution).

If the modern brine injector is used, the meat products should be deboned first. If the pickling is carried out by injection into a vein or artery, the deboning may take place thereafter.

The time and intensity of the stirring treatment will of course depend on the nature of the products to be processed. Using the stirring treatment which includes both a vertical and a horizontal component of movement, the processing is somewhat milder and processing times of 12-36 hours will suffice for most products.

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with actual stirring times of 5-16 minutes per hour, using stirring speeds up to 25 revolutions per minute (rpm). Generally, there will be a roughly inverse relation between time and intensity of the treatment.

In the special case of pork hams and shoulders with fat or with fat and rind, the preferred conditions are a total processing time of 30-36 hours, wherein the stirring is continuous with 2-3 rpm.

After the treatment according to the invention the meat products are heated and packed in some usual way. Thus, they may be canned and then heated, during which treatment the separate meat pieces integrate to a molded, e.g. loaf-shaped product. Alternatively one may also mold the meat by compressing it in open molds from which, after heating, the molded products are removed, and then packed in plastic packages; if desired the product may be sliced before packing.

For carrying out the present method it is suitable to use a container of the general type marketed for carrying out the method according to the U.S. Pat. No. 3,775,134. However, in this case the blade or blades of the stirring device should have positions relative to the shaft such that they impart at the same time a vertically directed component of movement to the stirred material. To this end the blades have surfaces extending entirely or partially in a non-perpendicular relation to the shaft.

#### BRIEF DESCRIPTION OF THE DRAWING

For a better understanding of the invention possible embodiments thereof will now be described with reference to the attached drawing which shows examples of suitable embodiments of such an apparatus, it being understood that these embodiments are merely exemplary.

FIG. 1 is a vertical cross-section of a first embodiment of the container according to line I-I in FIG. 2.

FIG. 2 is a plan view of the container shown in FIG. 1.

FIG. 3 is a side elevation of the stirring means according to a second preferred embodiment.

FIG. 4 is a plan view of the stirring means according to FIG. 3.

#### DESCRIPTION OF PREFERRED EMBODIMENTS

The stirring device shown in FIGS. 1 and 2 comprises a container 1 having vertical side walls and a bottom. In the embodiment shown, the horizontal cross-section of the container is rectangular with rounded corners but said cross-section may also have a different shape. The container 1 is provided with a number of suitable feet 2 with which it may rest on a base, e.g. a floor or table.

At their upper edges, the side walls of the container are provided with outwardly turned flanges. An elongated bridge piece 3, secured to the flanges of two opposite side walls, extends in the central parts of the upper side of the container. On top of this bridge piece 3 and in the middle thereof an electric motor 4 with a gear box 5 effecting a reduced velocity transmission is secured, such that the output shaft 6 of the gear box extends downwardly through the center of the bridge piece 3 into the container 1. The stirring shaft 7 is secured to the shaft 6, e.g. by means of a key and key way. The shaft 7 is mounted overhanging or cantilevered from the shaft 6 and extends down to nearly the bottom of the container 1 so that the assembly of bridge piece with drive unit 4, 5 and stirring shaft 7 can be removed by loosening the connection between the

bridge piece and the opposite side walls of the container in order to be cleaned or replaced or repaired respectively.

The stirring shaft 7 carries a number of stirring blades 8, in the embodiment shown three blades, secured at mutual angular spacings of 120° to the shaft 7 in different levels so that each blade serves part of the contents of the container when the shaft 7 is rotated.

According to this embodiment the blades are not provided perpendicular to the shaft, as in the prior art, but inclined relative to the shaft 7 so that when the shaft is rotated in the direction of the arrow 9 in FIG. 2 the blades impart an upwardly directed vertical component of movement to the meat pieces stirred in the container.

If the angles of inclination of the blades are mutually equal as shown and, moreover, the blades have equal mutual angular spacings around the shaft, they are approximately contained in an imaginary helical surface around the shaft, whereby the matter stirred in the container moves substantially according to an upwardly directed helical movement.

In the embodiment according to FIG. 3 and 4 the blades each comprise a hollow body 10, which e.g. may be a welded structure, having flat upper and lower surfaces 11 and 12 respectively and rounded, preferably substantially half-cylindrical side walls 13. Said rounded portions impart the vertical components of movement to the meat pieces. The blade body is substantially diamond-shaped in plan view whereby the width in horizontal direction, circumferential relative to the shaft, first increases, starting from the shaft, up to a maximum 14, at about half the radial length of the body, and thereafter decreases again. It appears that with this embodiment of the stirring means the most favorable results are attained. The meat pieces are thereby at the same time exposed to radial forces so that the stirring is even more intensified. Nevertheless the rounded portions of the blade bodies ensure a mild engagement with the meat pieces so that they will be treated gently.

It should be understood that the intensity of treatment of the method disclosed in U.S. Pat. No. 3,775,134 and such method using the improved apparatus disclosed herein is much less intense than was thought possible by the art following the teachings of U.S. Pat. No. 3,076,713. In this better patent, it is clear that the meat is worked so hard that there is a substantial rise in the temperature thereof. To the contrary, there is no substantial rise in the temperature of the meat during stirring in either the process of U.S. Pat. No. 3,775,134 or such process using the improved apparatus described herein.

It will be obvious to those skilled in the art that various changes may be made without departing from the scope of the invention and the invention is not to be considered limited to what is shown in the drawing and described in the specification.

What is claimed is:

1. Apparatus for the treatment of meat products, comprising:
  - a rectangular container with rounded edges;
  - stirring means for subjecting all of the meat chunks retained in said container to a stirring movement, said stirring means comprising:
    - a stirring shaft;
    - a plurality of stirring blades affixed to said stirring shaft at angular spacings thereabout and at dif-



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ferent levels thereon, each of said blades comprising a body which is symmetrical relative to its longitudinal axis and has flat upper and lower surfaces and rounded side walls, said rounded side walls causing horizontal and vertical components of movement of the meat chunks, the horizontal width of the blade perpendicular to its longitudinal axis first increasing, starting from the shaft up to a maximum substantially at half the radial blade length and thereafter decreasing again, and  
drive means connected to said stirring shaft for supplying sufficient power to said shaft to impart said horizontal and vertical components of movement to chunks of meat filling said container; and

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support means connected to said stirring means for supporting said stirring means such that said stirring shaft and said stirring blades are suspended within said container.

5 2. An apparatus in accordance with claim 1 wherein said stirring means is for subjecting meat chunks retained in said container to a stirring movement of an intensity insufficient to substantially raise the temperature of the meat but sufficient to cause the meat chunks to exude a tacky exudate, and said drive means is for supplying sufficient power to said shaft to cause said stirring blades to impart horizontal and vertical components of movement to chunks of meat filling said container at a velocity insufficient to substantially raise the temperature of the meat.  
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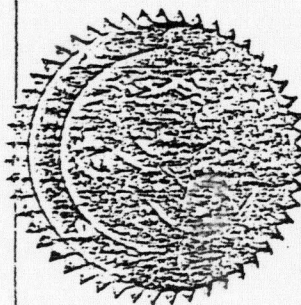
UNITED STATES PATENT OFFICE  
CERTIFICATE OF CORRECTION

PATENT NO. : 3,934,860  
DATED : January 27, 1976  
INVENTOR(S) : Michels et al

It is certified that error appears in the above-identified patent and that said Letters Patent are hereby corrected as shown below:

Column 1, line 67, after "method" insert --using prior apparatus--

Signed and Sealed this  
thirteenth Day of April 1976



Attest:

*Ruth C. Mason*  
RUTH C. MASON  
Attesting Officer

*C. Marshall Dann*

C. MARSHALL DANN  
Commissioner of Patents and Trademarks



## Meat Systems Corporation

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(609) 871-7589

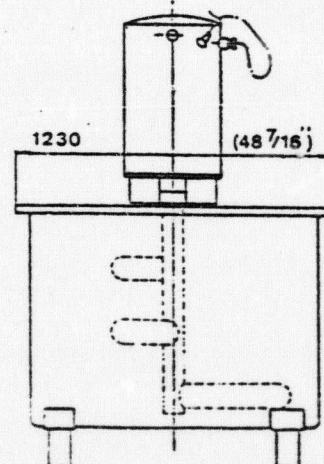
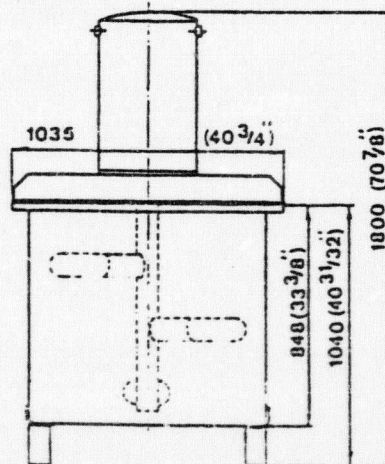
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Pts. EXH. 4-B Id.  
Def't. Ben Langerhol End.  
Date 12/9/75

## MEAT MASSAGER &amp; CURER, TYPE MC

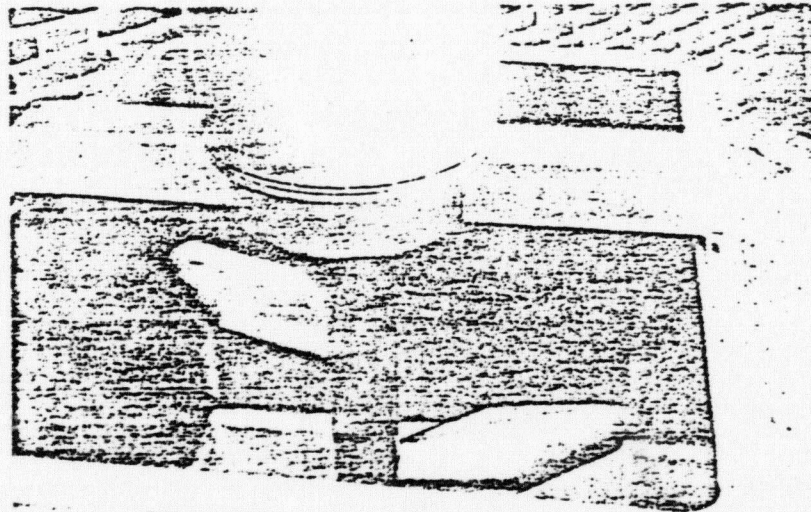
The type MC Curing System is a most advanced and economical means for processing many varieties of meats including hams, shoulders, pork loins, tongues, and beef. Proper System utilization will enable attainment of optimum yield, color development, uniformity, improved binding and slicing qualities. Moreover, the total curing period is completed in 24 hours, or less, where two days and longer used to be required.

The complete system is comprised of a program control unit and the curing tank. The PCU includes three clocks for control of the total program, rest and massaging times (rotation duration). A multi-unit PCU is available to control five curing tanks simultaneously. The curing tank is rectangular, and of atmospheric design with a vertical stirring arm and drive unit which is mounted within a sealed and specially ventilated enclosure on top of the tank. The design of the stirring arm includes three shaped and tapered wings which prevent product breakdown but enables proper and efficient massaging.



## MEAT MASSAGER &amp; CURER, TYPE MC

Material	Stainless Steel
Dimensions	49 in. x 41 in. x 71 in.
Capacity	1600 lbs. (nominal)
Motor	208 / 230 / 460 volts
Arm Rotation Speed	4.5 or 9.0 rpm (6.5 & 13.0 rpm - optional)
Program Control	Includes three clocks for control of program, resting and massaging times; all required safety switches, starting equipment and disconnects installed in a NEMA 4 stainless steel enclosure.
Multi-System Control (Auxillary Panel)	Includes all required safety switches, starting equipment and disconnects installed in a NEMA 4, stainless steel enclosure.



Interior view of Type MC unit;  
Stirring arm and wing assembly.

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## Meat Systems Corporation

### MEAT MASSAGER & CURING SYSTEM Models MC4, MC6, MC9 & MC13

**Material**  
Stainless Steel

**Dimensions**  
49 in. X 41 in. X 71 in.

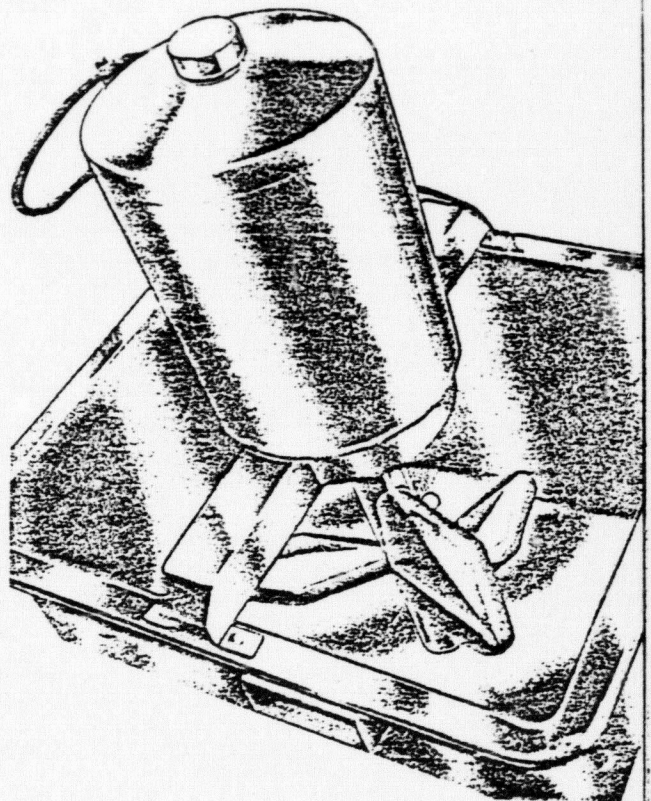
**Capacity**  
1600 lbs. (nominal)

**Motor**  
208/230/460 volts;  
3/4, 1 or 1½ hp,  
dependent on arm rotation speed

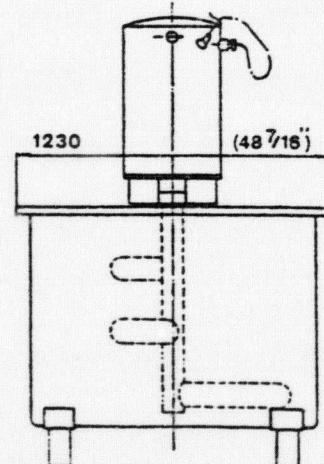
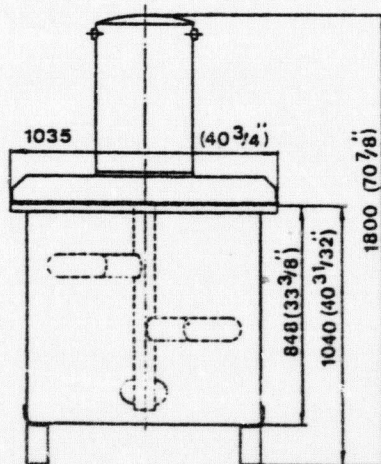
**Arm Rotation Speed**  
4.5 or 9.5 rpm standard,  
6.0 & 13.5 rpm optional.  
Many other speeds down to 1 rpm  
are available by special order.

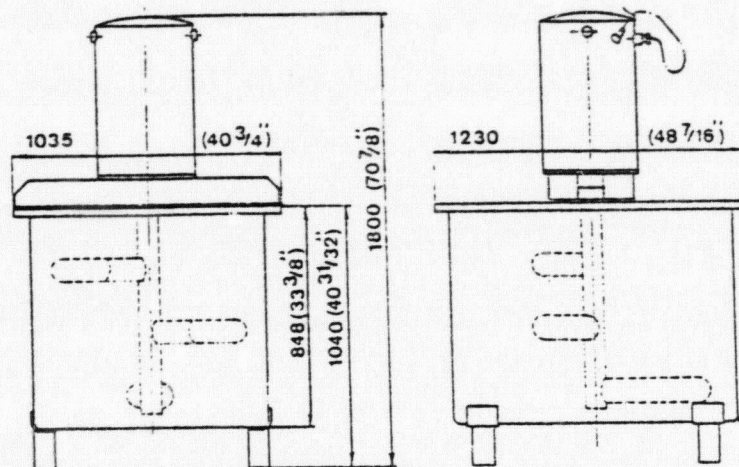
**Program Control Unit**  
Includes three clocks for control  
of program, resting and massaging  
times; all required safety  
switches, starting equipment and  
disconnects installed in a NEMA 4  
stainless steel enclosure.

**Multi-System Control (Aux. Panel)**  
Includes all required safety  
switches, starting equipment and  
disconnects installed in a NEMA  
4, stainless steel enclosure.



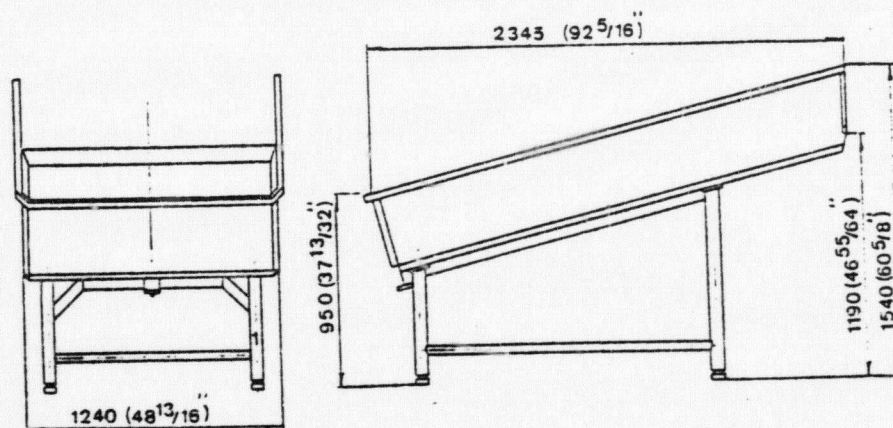
Interior View: Type MC Unit.





### Meat Yield Improver, type DK

Material	stainless steel type 316, thickness 3 mm ( $\pm 1/3$ " )
Dimensions	1230 x 1035 x 1800 mm ( $\pm 49$ " x 41" x 71" )
Gross contents	850 ltr.
Capacity	net (meat + brine) 700 kgs (1540 lbs)
Motor	on demand. Indicate required voltage, cycles, phases.
Control unit	Standard switch in combination with relays, 3 time clocks, control lights, built together on a ground plate and covered with polyester box with transparent front.



### Meat Chute type DKV 1

Material	stainless steel type 316, thickness 3 mm ( $\pm 1/3$ " )
Dimensions	1240 x 2345 x 1540 mm ( $\pm 49$ " x 92" x 61" )
Standard execution	without wheels.



Sheet 2 of Patent 3934860  
FIG. 3

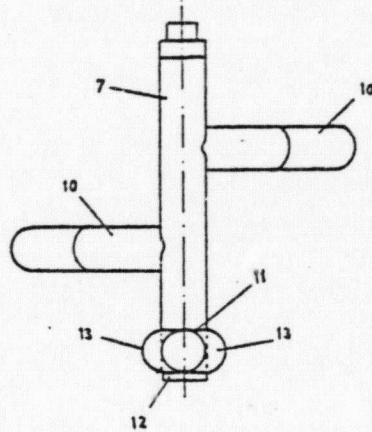
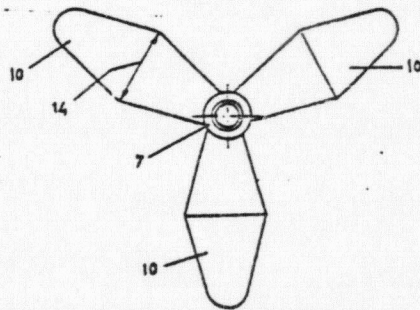
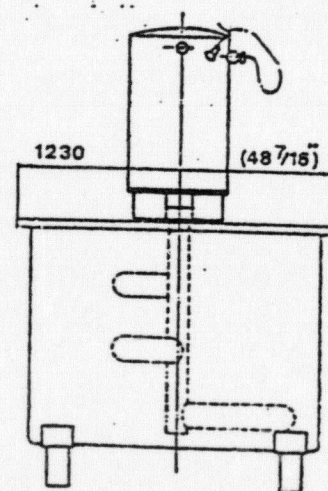
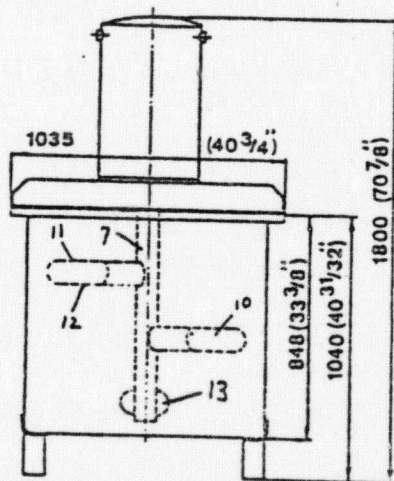


FIG. 4



MEAT SYSTEMS  
machine

Interior View: Type MC Unit.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

MEAT SYSTEMS CORPORATION,	:	
	:	
Plaintiff,	:	
	:	
-against-	:	
BEN LANGEN-MOL, INC., a New York	:	
corporation, HOMBURG, B.V. and	:	
KNUD SIMONSEN INDUSTRIES LTD.,	:	
	:	
Defendants,	:	
	:	75 Civ. 5306 (WK)
-and-	:	
BEN LANGEN-MOL, INC., a Delaware	:	ANSWER OF INTERVENOR
corporation,	:	BEN LANGEN-MOL, INC.,
	:	a Delaware corporation
Applicant for Intervention,	:	
	:	
-and-	:	
CARL ADILETTI and STEPHEN ZITIN,	:	
	:	
Additional Defendants	:	
on Counterclaim.	:	

----- x

Intervenor BEN LANGEN-MOL, INC., a Delaware corporation ("Belam-Delaware"), for its answer to the Fifth and Tenth Causes of Action of the amended complaint:

AS TO PLAINTIFF'S FIFTH CAUSE OF ACTION

1. With respect to the averments of paragraph 41 thereof:

(a) denies each and every averment of paragraph 1 thereof except states that this action purports to arise under, and jurisdiction and venue are purported to be based on, the laws of the United States referred to therein;



(b) states that it is without knowledge or information sufficient to form a belief as to the truth of any of the averments of paragraphs 2, 3, 4, 5, 9, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39 and 40 thereof;

(c) denies each and every averment of paragraph 8 thereof except respectfully refers the Court to U.S. Letters Patent No. 3,775,134 (the "'134 Patent") for its contents;

(d) denies each and every averment of paragraph 10 thereof except respectfully refers the Court to U.S. Letters Patent No. 3,076,713 (the "'713 Patent") for its contents; and

(e) denies each and every averment of paragraph 13 thereof except respectfully refers the Court to the '134 Patent and to the '713 Patent for their contents.

2. Denies each and every averment of paragraph 42 thereof, except states that plaintiff's Fifth Cause of Action purports to assert a claim for the relief therein described.

3. States that it is without knowledge or information sufficient to form a belief as to the truth of any of the averments of paragraphs 43, 44, 46 and 47 thereof.

4. Denies each and every averment of paragraphs 45, 48 and 49 thereof.

AS TO PLAINTIFF'S TENTH CAUSE OF ACTION

5. With respect to the averments of paragraph 71 thereof:

(a) repeats and reavers each and every averment of paragraphs 1 to 4 hereof as if fully set forth herein; and

(b) states that it is without knowledge or information sufficient to form a belief as to the truth of any of the averments of paragraphs 52, 53, 54, 55, 56, 59, 60, 61, 64, 65, 68 and 69 thereof.

6. States it is without knowledge or information sufficient to form a belief as to the truth of any of the averments of paragraphs 73, 74, 75 and 76 thereof.

7. Denies each and every averment of paragraphs 77 and 78 thereof.

AS AND FOR A FIRST COUNTERCLAIM  
AGAINST PLAINTIFF AND ADDITIONAL DEFENDANTS  
CARL ADILETTI AND STEPHEN ZITIN

8. On or about December 23, 1975, Belam-Delaware entered into a purchase transaction with defendant Ben Langen-Mol, Inc., a New York corporation ("Belam-New York"), pursuant to which Belam-Delaware acquired certain of the assets and assumed certain of the liabilities of Belam-New York. Among the assets so acquired by Belam-Delaware was an assignment of the counterclaim of Belam-New York asserted in its answer heretofore filed in this action against plaintiff and additional defendants Carl Adiletti and Stephen Zitin.

9. Belam-Delaware hereby adopts each and every averment set forth in said counterclaim and reavers said averments as if fully set forth herein.

AS AND FOR A SECOND COUNTERCLAIM  
AGAINST PLAINTIFF AND ADDITIONAL DEFENDANTS  
CARL ADILETTI AND STEPHEN ZITIN

10. On January 27, 1976, the '860 Patent was duly issued to defendant Homburg B.V. ("Homburg") upon the applica-



tion of Paul W. Michels and Ben G. Langen for an invention on an apparatus for the treatment of meat products. A true copy of the '860 Patent is annexed hereto as Exhibit A and made a part hereof.

11. Since January 27, 1976, Homburg has been, and it presently is, the owner of the '860 Patent.

12. On or about January 26, 1976, Belam-Delaware became the exclusive licensee of Homburg under the '860 Patent.

13. Plaintiff is, and since January 27, 1976, has been, engaged within the United States in the manufacture, offer for sale and sale of a meat massaging device which infringes the '860 Patent without authority to do so.

14. At all times material hereto plaintiff has had notice of the '860 Patent and has been advised from time to time by Homburg of the claims covered by said patent and of the fact that the meat massaging device manufactured, offered for sale and sold by plaintiff infringes said patent.

15. Additional defendants Adiletti and Zitin are the sole stockholders of plaintiff, have unlawfully conspired with plaintiff to infringe the '860 Patent and have participated in, and unlawfully profited from, the wrongs hereinabove alleged.

16. Belam-Delaware has no adequate remedy at law.

AS AND FOR A THIRD COUNTERCLAIM  
AGAINST PLAINTIFF AND ADDITIONAL DEFENDANTS  
CARL ADILETTI AND STEPHEN ZITIN

17. Repeats and reavers each and every averment of paragraph 8 hereof as if fully set forth herein.

18. On November 27, 1973, the '134 Patent was duly and legally issued to Homburg upon the application of Paul W.

Michaels and Arnold Heun for an invention in the field of treating meat products. A true copy of the '134 Patent is annexed hereto as Exhibit B and made a part hereof.

19. Since November 27, 1973, Homburg has been, and it presently is, the owner of the '134 Patent.

20. Prior to December 23, 1975, Belam-New York was the exclusive licensee of Homburg under the '134 Patent.

21. On or about December 23, 1975, pursuant to the purchase transaction between Belam-New York and Belam-Delaware, Belam-Delaware acquired the exclusive rights of Belam-New York under the '134 Patent.

22. Plaintiff is, and at all times since in or about July 1975 has been, engaged in the manufacture, offer for sale and sale of meat processing devices. In connection with the sale of said devices plaintiff has induced its customers and others to infringe the '134 Patent.

23. The devices sold by plaintiff constitute an apparatus for use in practicing the process covered by the '134 Patent. At all times material hereto plaintiff knew that said devices were especially made and adapted for use in infringement of the '134 Patent and were not a staple article or commodity of commerce suitable for substantial non-infringing use. By selling said devices to others, plaintiff knowingly contributed to the infringement by said persons of the '134 Patent.

24. Additional defendants Adiletti and Zitin are the sole stockholders of plaintiff, have unlawfully conspired with plaintiff to induce others to infringe the '134 Patent,



have contributed to the infringement by others of the '134 Patent and have participated in, and unlawfully profited from, the wrongs hereinabove alleged.

23. Belam-Delaware has no adequate remedy at law.

WHEREFORE, intervenor Ben Langen-Mol, Inc., a Delaware corporation, demands judgment:

(a) dismissing the Fifth and Tenth Causes of Action of the amended complaint;

(b) granting said intervenor on its first counter-claim against plaintiff and additional defendants Adiletti and Zitin preliminary and permanent injunctive relief (i) enjoining said persons, and all those acting in concert with them, from making any further use of confidential data and trade secrets belonging to said defendant, (ii) directing said persons to return such data and trade secrets to said defendant and (iii) requiring said persons, jointly and severally, to account to said defendant for their profits and said defendant's losses;

(c) granting said intervenor on its second counter-claim against plaintiff, additional defendants Adiletti and Zitin, and all persons acting in concert with them, preliminary and permanent injunctive relief (i) enjoining said persons from further infringement of U.S. Letters Patent No. 3,934,360, (ii) requiring said persons, jointly and severally, to account to said intervenor for their profits and said intervenor's losses and (iii) awarding said intervenor treble the amount of such sums;

(d) granting said intervenor on its third counter-claim against plaintiff, additional defendants Adiletti and Zitin, and all persons acting in concert with them, preliminary and permanent injunctive relief (i) enjoining said persons from infringing, or inducing or contributing to the infringement by others, of U.S. Letters Patent No. 3,778,134, (ii) directing said persons, jointly and severally, to account to said intervenor for their profits and said intervenor's losses, (iii) awarding said intervenor treble the amount of such sums;

(e) granting said intervenor its costs and disbursements of this action, including reasonable attorneys' fees; and

(f) granting said intervenor such other and further relief as to this Court may seem just and proper.

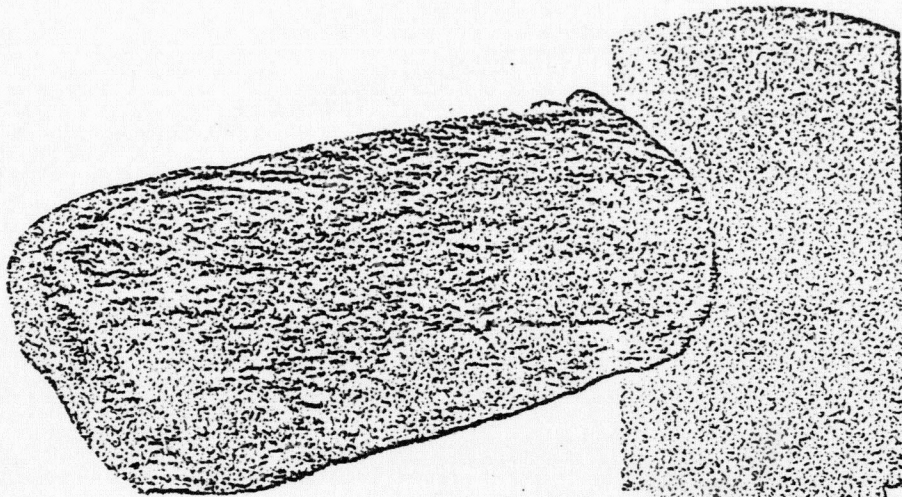
Dated: New York, New York  
July , 1976

REBOUL, MacMURRAY, HEWITT, MAYNARD  
& KRISTOL

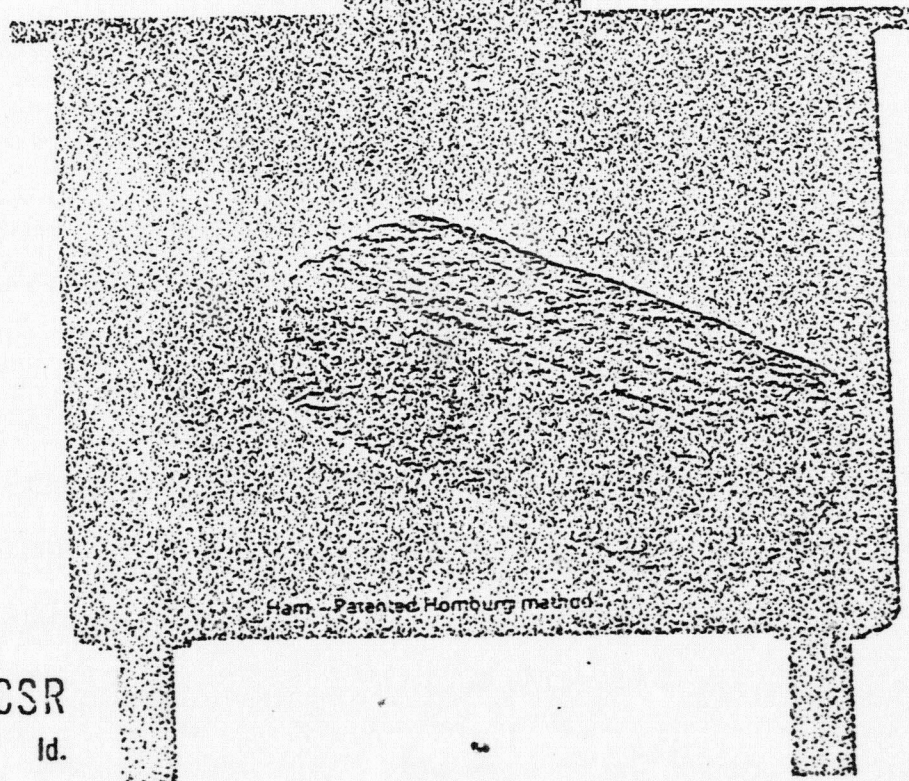
By \_\_\_\_\_  
A Member of the Firm  
Attorneys for Intervenor  
Ben Langen-Mol, Inc.,  
a Delaware corporation  
75 Rockefeller Plaza  
New York, New York 10019  
Tel.: (212) 541-6310



# BELAM MEAT YIELD IMPROVER



Ham - Conventional method.



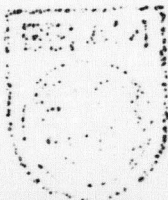
Ham - Patented Homburg method.

ROBERTA LERCH, CSR

EXH. 2 Id.

Drafts. Ben Langen - Mol. Etd.

Date 12/21/75



**BEN LANGEN-MOL INC.**  
**122 EAST 42 ND STREET**  
**NEW YORK, N.Y. 10017**

TEL. (212) - 637 - 1127



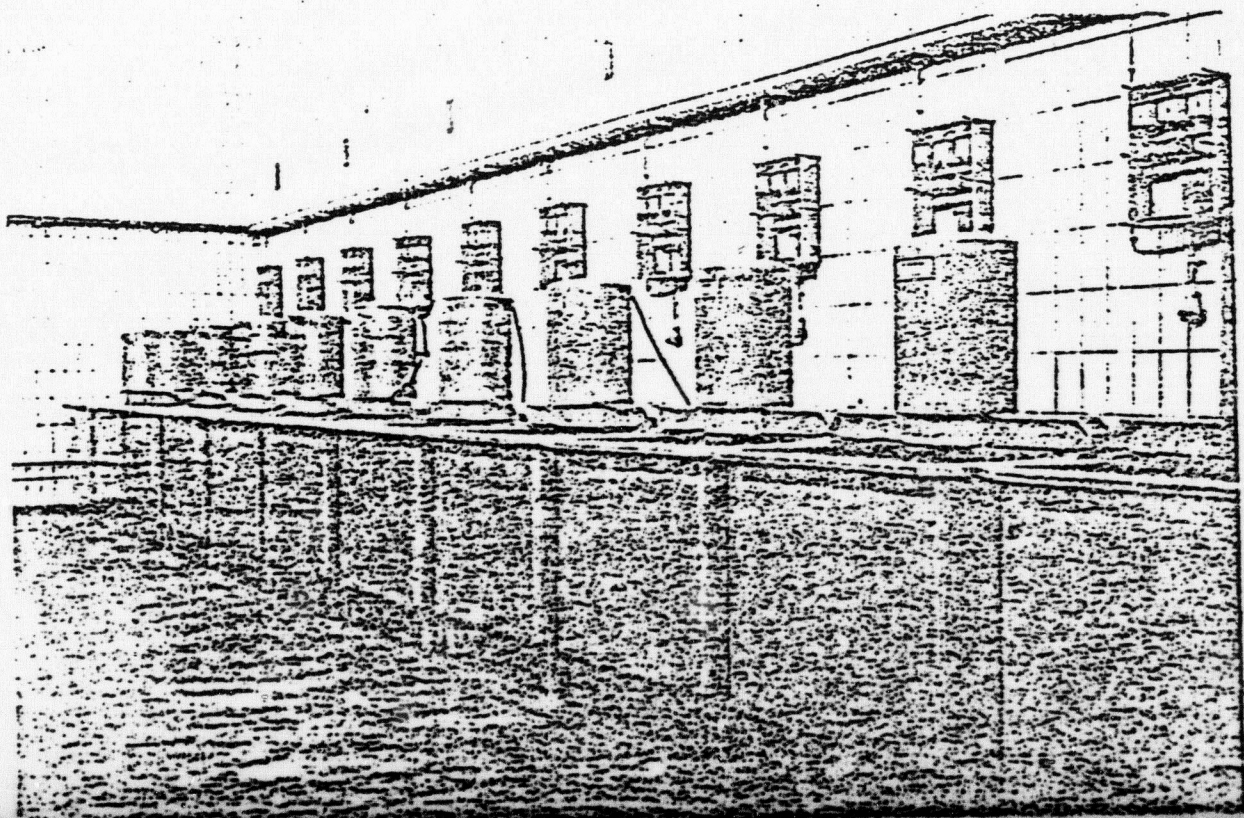
**BELAM MEAT YIELD IMPROVER (MYI)**

- the most advanced curing system for hams, shoulders, bacon, pork-loins etc. The Belam Meat Yield Improver is a revolutionary system for optimum yield and quality results in the field of cured meat manufacture. The production method has been patented in many countries by Homburg, Cuyk, whereas Belam manufactures and sells the MYI under licence.

**General**

The MYI consists of a 850 litre stainless steel container fitted with a stirring arm driven by a gear box. The design of the stirring arm has been established by years of experience and field testing ensuring the optimum agitation for the product being manufactured (various designs are available for different product types).

An electric control unit supplied with the machine controls each operation cycle (20 - 24 hours) and the total stirring arm rotation time during each cycle. The speed and direction of the main shaft, the design of the stirring arm and period of agitation is determined by the type and quality of product required. A total curing time within 24 hours is guaranteed.



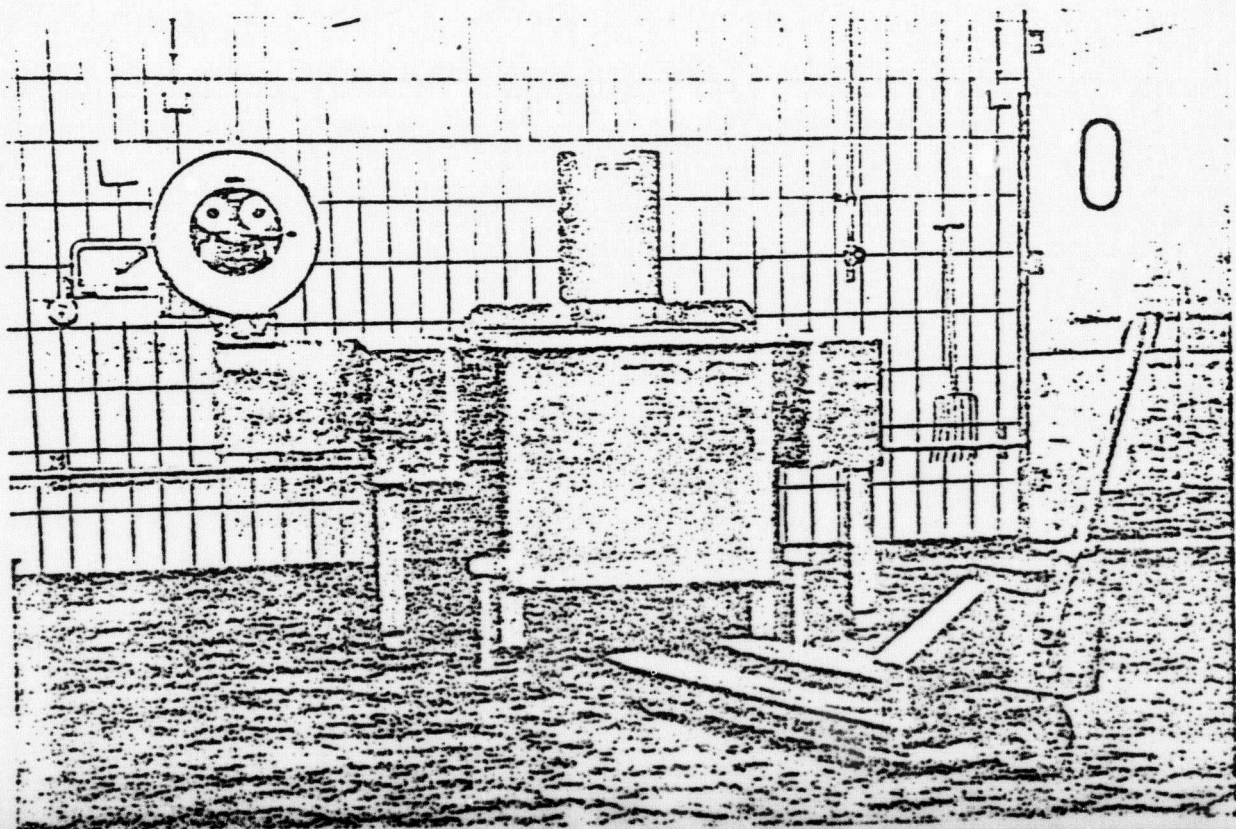


This 24 hours curing system offers the following remarkable advantages:

- 1 the brine percentage can be obtained exactly, underweight injection being rectified by addition of brine to the MYI
- 2 the product is ready to be packed (into cans, moulds, casings) within 24 hours
- 3 less brine and protein losses result in a considerable increase in yield
- 4 improved meat binding properties minimizing cooking losses and incidence of free moisture
- 5 product quality is improved having better flavour, colour and homogeneity
- 6 trays, pallets, racks, etc. for draining are eliminated the MYI requiring only limited floor space
- 7 the MYI means labour saving up to 30%

### Operation details

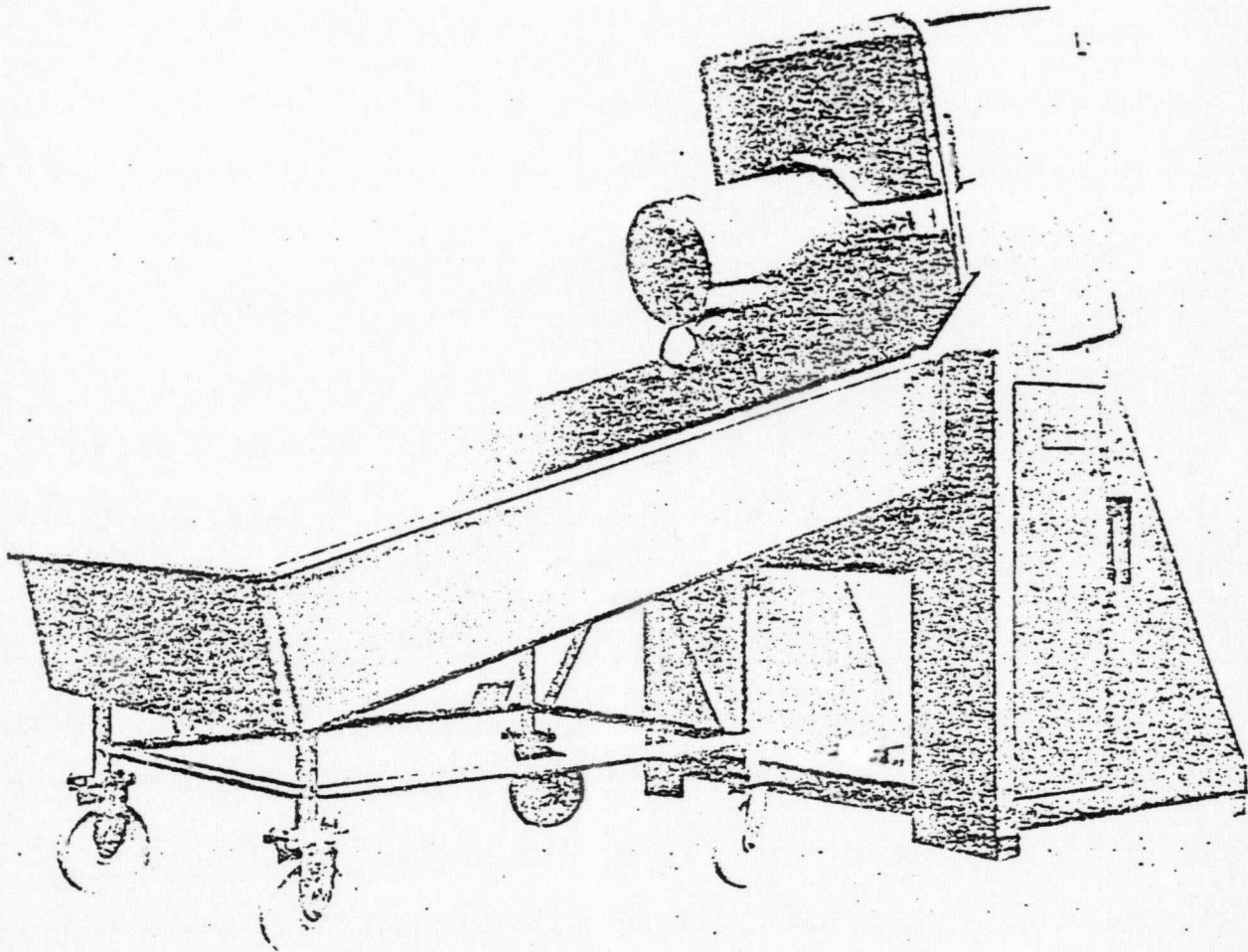
Deboned meat is injected with brine and loaded into the MYI. Each container has a capacity of 850 litres (700 kgs meat and brine). The brine percentage is checked on a weighing scale and any deficiency made up by brine addition. A special weighing scale has been developed by Belam and Berkel for this purpose which has several registration possibilities in its delivery programme. The MYI is transported to the curing room and connected to the programmed control unit. At the end of the curing cycle programme the machine is automatically stopped and the meat is ready for the packing room.





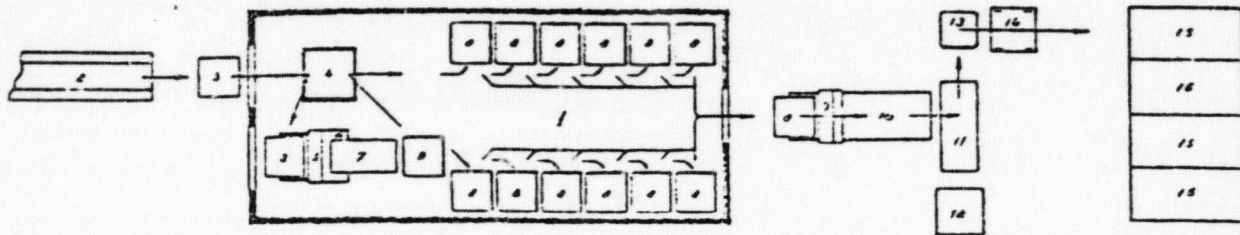
**Extra labour saving**

In the meat packing room the MYI is emptied with the minimum of effort by use of a specially developed lifting device and chute (see drawings).



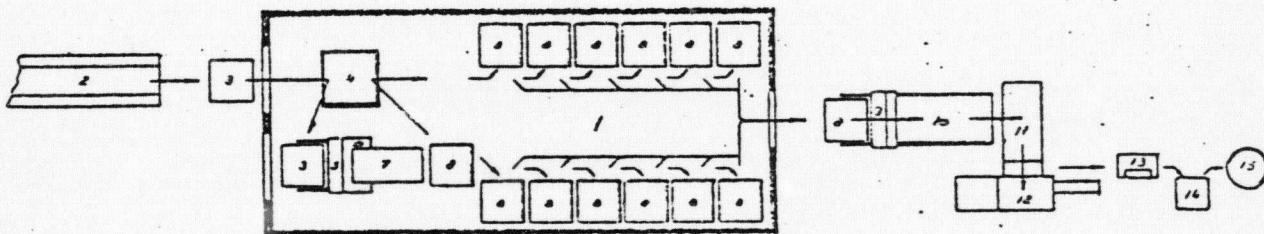
Controlled by a simple handle the MYI is lifted and the meat dumped into the chute. The working height of the chute is designed to ensure the packer easy access to the product.





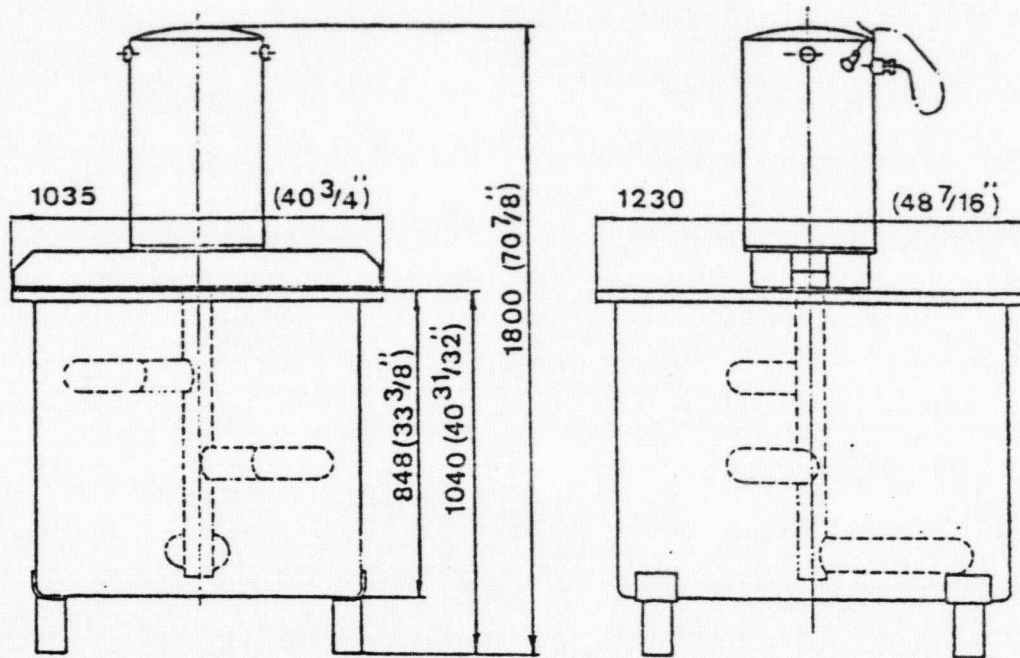
Lay-out of a meat packing line (moulds)

- |                           |                       |
|---------------------------|-----------------------|
| 1 chilling room           | 8 Meat Yield Improver |
| 2 deboning conveyor       | 9 lift/dumping unit   |
| 3 portable meat container | 10 large meat chute   |
| 4 floor weighing scale    | 11 packing-table      |
| 5 small meat chute        | 12 empty moulds       |
| 6 dumping unit            | 13 vacuum meat press  |
| 7 multi-needle injector   | 14 filled moulds      |
|                           | 15 cooking cabins     |



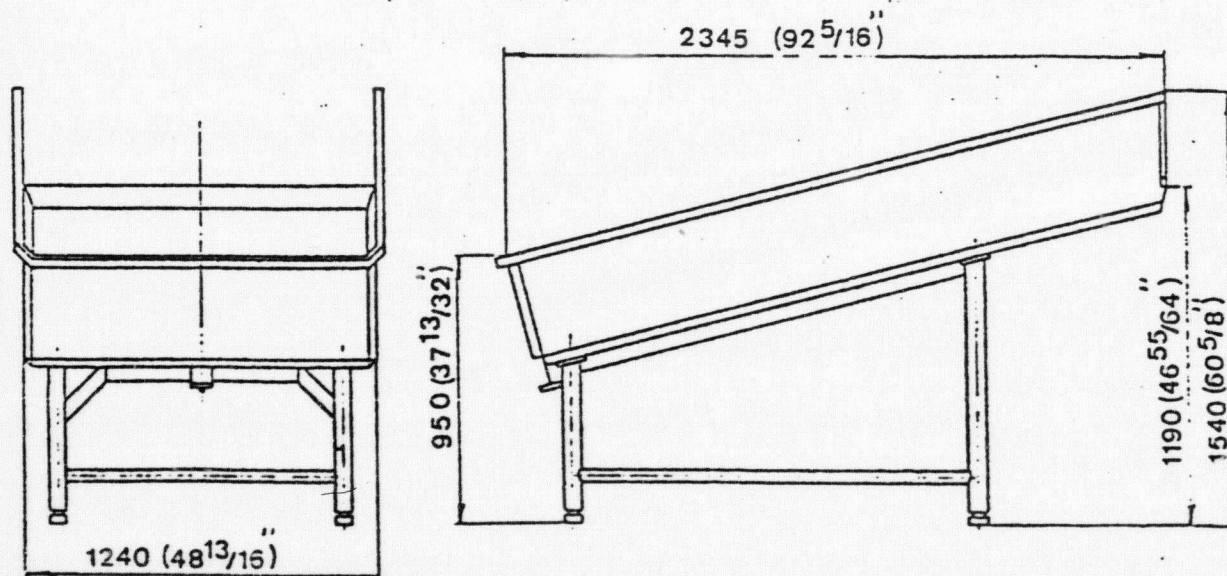
Lay-out of a meat packing line (cans)

- |                           |                       |
|---------------------------|-----------------------|
| 1 chilling room           | 8 Meat Yield Improver |
| 2 deboning conveyor       | 9 lift/dumping unit   |
| 3 portable meat container | 10 large meat chute   |
| 4 floor weighing scale    | 11 packing-table      |
| 5 small meat chute        | 12 vacuum meat press  |
| 6 dumping unit            | 13 weighing scale     |
| 7 multi-needle injector   | 14 closing machine    |
|                           | 15 basket             |



### Meat Yield Improver, type DK

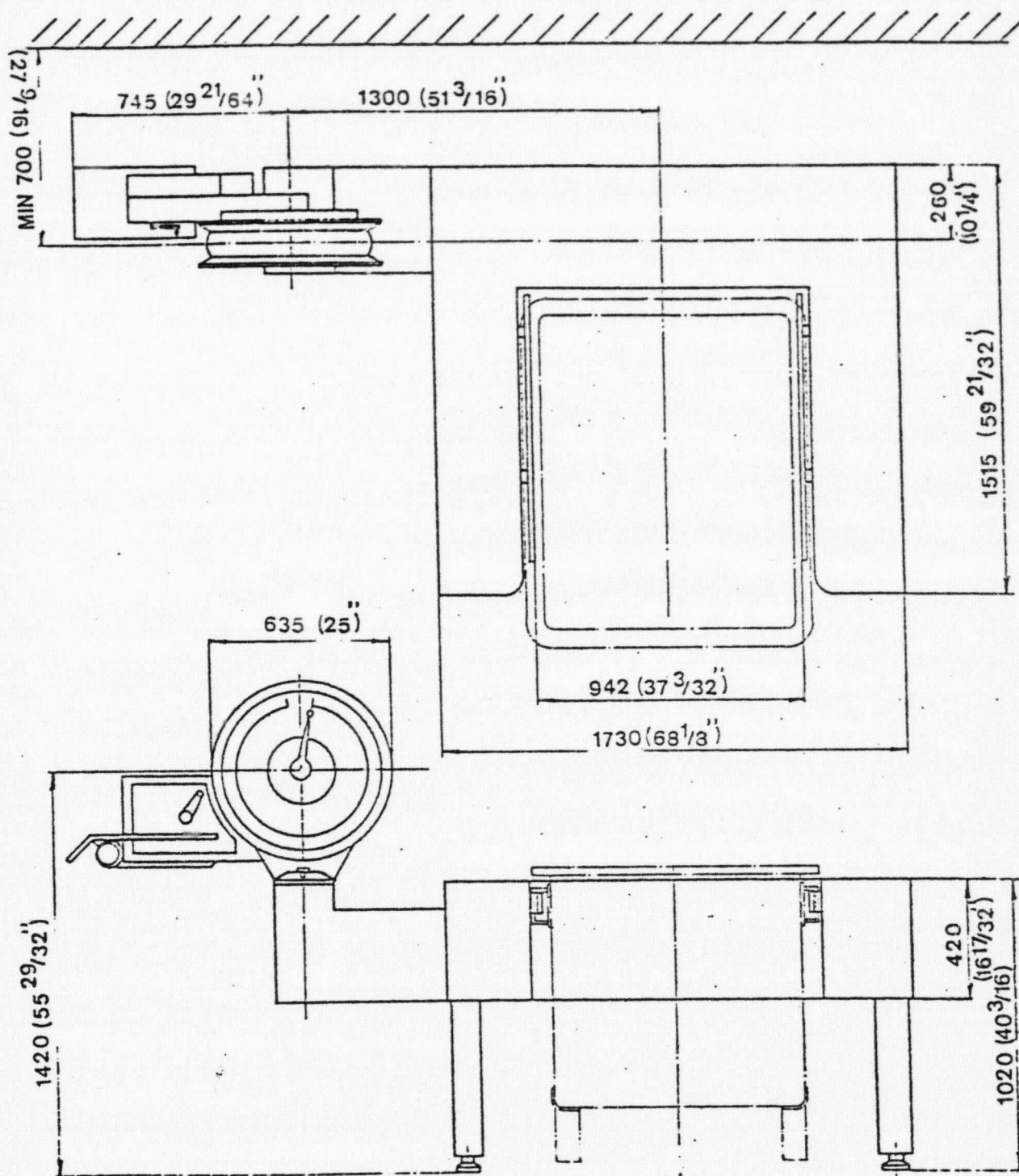
Material	stainless steel type 316, thickness 3 mm ( $\pm 1/8$ " )
Dimensions	1230 x 1035 x 1800 mm ( $\pm 49$ " x $41$ " x $71$ " )
Gross contents	850 ltr.
Capacity	net (meat + brine) 700 kgs (1540 lbs)
Motor	on demand. Indicate required voltage, cycles, phases.
Control unit	Standard switch in combination with relays, 3 time clocks, control lights, built together on a ground plate and covered with polyester box with transparent front.



### Meat Chute type DKV 1

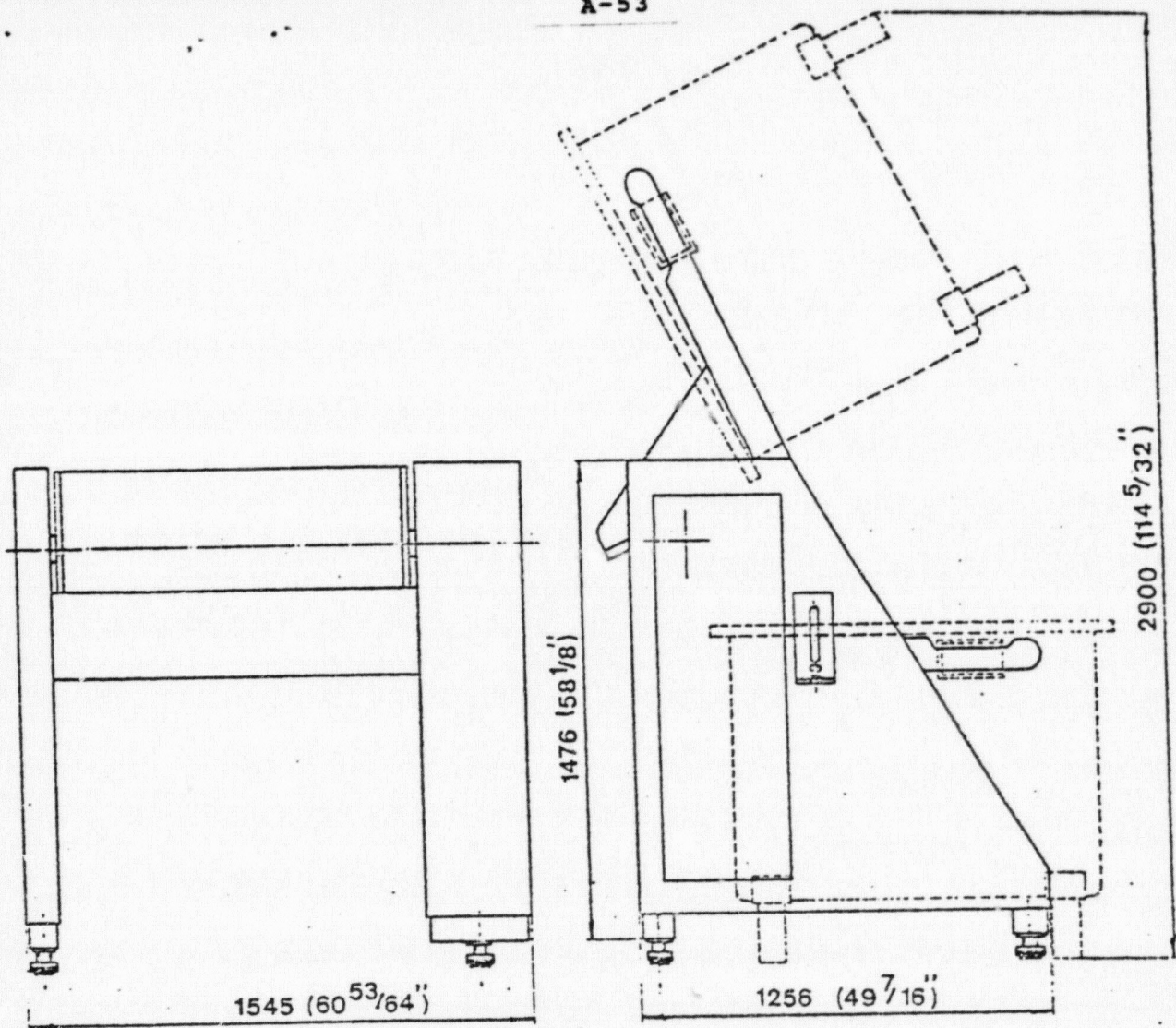
Material	stainless steel type 316, thickness 3 mm ( $\pm 1/8$ " )
Dimensions	1240 x 2345 x 1540 mm ( $\pm 49$ " x $92$ " x $61$ " )
Standard execution	without wheels.





Belam/Berkel weighing unit for MYI

Material	stainless steel type 316, thickness 3 mm ( $\pm 1/8"$ )
Dimensions	2910 x 1515 x 1740 mm ( $\pm 115" \times 60" \times 69"$ )
Dial plate scale	Kgs or lbs



### Hydraulic lifting device type DKH 5

Material	stainless steel type 316, thickness 3 mm ( $\pm 1/8$ " )
Dimensions	without MYI 1256 x 1545 x 1476 mm ( $\pm 50$ " x 61" x 58") with MYI (highest position) 2900 mm ( $\pm 115$ " )
Lifting capacity	1200 Kgs (2640 lbs)
Motor	on demand. Indicate required voltage, cycles, phases.

### Guarantee

All machines are guaranteed against faulty material or workmanship for 6 months.

### Service

Our know-how of the MYI curing system will be the best service we can possibly give.

Handed by:



# OPERATING MANUAL FOR CONTROL PANEL OF BELAM MEAT YIELD IMPROVER



BEN LANGEN-MOL INC.  
122 EAST 42 ND STREET  
NEW YORK, N.Y. 10017

TEL. (212) - 687 - 1127



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1	Installation
2	Belam single panel operation cycle
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13	Multiple control DK-18 and DK-20
14	Drawing single control panel - 3WS-43-64/14/242
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	Draw: Starter for multiple control panel
	- 4WS-43-64/14/241
15	Belam. Multiple panel operation cycle
16	Resting
17	Reverse
18	Resting
19	Forward contd.
20	Starters
21	Recommended spare parts list for Belam control panels





### INSTALLATION

During installation inside of the panel must be kept clean.

Dirt pieces of insulation etc. will cause failures of relays and contactors.

Panel must always be closed with all latches locked.

Use only the special mounting brackets provided for wall mounting panel.

For conduit connections, use only the knockouts on steel flanges. (Top and bottom.)

Never use contact spray etc. on relays and contactors.

Be sure that no moist air can come inside the panel through the conduit.

It is important to install proper water-tight conduit hubs to make sure no moisture will enter control panel.

U.L. and OSHE, cas approved.



### BELAM SINGLE PANEL OPERATION CYCLE

Set main circuit breaker to "ON"

White pilot light - "End of Process" - "ON".

Press curing period timer "Reset" pushbutton.

Press "Start" pushbutton.

#### FORWARD START

White pilot light - "End of Process" - "OFF".

Control relay CRO - energized.

Time relay TR1 - "Curing Period" - energized.

CONTACT CRO (13-14) - CLOSED  
CONTACT CRO (23-24) - CLOSED  
CONTACT CRO (31-32) - OPEN

Green pilot light - "Operation" - ON.

Forward contactor MF energized.

CONTACT MF (13-14) - CLOSED  
CONTACT MF (23-24) - CLOSED  
CONTACT MF (11-12) - OPEN

Time relay TR4 - "Reset" - energized.

After 3 sec. contact TR4 (6-7) OPENS.

Alternator relay CR1 energized.

CONTACT CR1 (23-24) - CLOSED  
CONTACT CR1 (31-32) - OPEN  
CONTACT CR1 (13-14) - CLOSED

Time relay TR3 - "Rotating Period" - energized.

MOTOR RUNNING FORWARD - BEGINNING OF CYCLE.



RESTING

Timer TR3 times out & rotation stops.

Time relays CONTACT TR3 (3-4) - CLOSED

Forward contactor MF - OUT.

CONTACT MF (13-14) - OPEN  
CONTACT MF (11-12) - CLOSED  
CONTACT MF (23-24) - OPEN

Time relay TR4 - "Reset" - OUT.

CONTACT TR4 (6 - 7) - CLOSED

Time relay TR2 - "Reset Period" - energized.

CONTACT TR2 (6 - 8) - CLOSED.

MOTOR IS NOW RESTING.

REVERSE

At the end of the resting period, time relay TR2 times out and rotation starts.

Time relay CONTACT TR2 (4-5) - OPEN

Time relay TR3 "Rotating Period" - OUT.

CONTACT TR3 (4-5) - CLOSED

Reverse contactor MR - energized.

CONTACT MR (13-14) - CLOSED

CONTACT MR (21-22) - OPEN

CONTACT MR (11-12) - OPEN

Alternator: Relay CR1 - OUT.

CONTACT CR1 (31-32) - CLOSED

CONTACT CR1 (13-14) - OPEN

CONTACT CR1 (23-24) - OPEN

Time relay TR4 - "Reset" - energized.

After 3 sec. CONTACT TR4 (6-7) - OPEN

Time relay TR2 - "Reset period" - OUT.

CONTACT TR2 (6-8) - OPEN

CONTACT TR2 (4-5) - CLOSED

Time relay TR3 - "Rotating Period" - energized.

MOTOR IS RUNNING IN REVERSE.



RESTING

At the end of the rotating period, time relay TR3 times out and rotation stops.

Time relay - CONTACT TR3 (3 - 4) - CLOSED

Reverse contactor MR - OUT.

CONTACT MR (13-14) - OPEN  
CONTACT MR (11-12) - CLOSED  
CONTACT MR (21-22) - CLOSED

Time relay TR4 - "Reset" - OUT.

CONTACT TR4 (6 - 7) - CLOSED

Time relay TR2 - "Reset Period" - energized.

CONTACT TR2 (6 - 8) - CLOSED

MOTOR IS NOW RESTING.

FORWARD

At the end of the resting period, time relay TR2 times out.

Time relay - CONTACT TR2 (4 - 5) - OPEN  
Time relay TR3 rotating period - OUT  
CONTACT TR3 (4 - 5) - CLOSED

Forward contactor MF is energized.

CONTACT MF (13-14) - CLOSED  
CONTACT MF (23-24) - CLOSED  
CONTACT MF (11-12) - OPEN

Alternator relay CR1 energized.

CONTACT CR1 (23-24) - CLOSED  
CONTACT CR1 (31-32) - OPEN  
CONTACT CR1 (13-14) - CLOSED

Time relay TR4 - "Reset" - energized.

After 3 sec. CONTACT TR4 (6 - 7) - OPEN

Time relay TR2 - "Rest Period" - OUT.

CONTACT TR2 (6 - 8) - OPEN  
CONTACT TR2 (4 - 5) - CLOSED

Time relay TR3 - "Rotating Period" - energized.

MOTOR IS RUNNING FORWARD - CYCLE REPEATS.





NOTES:

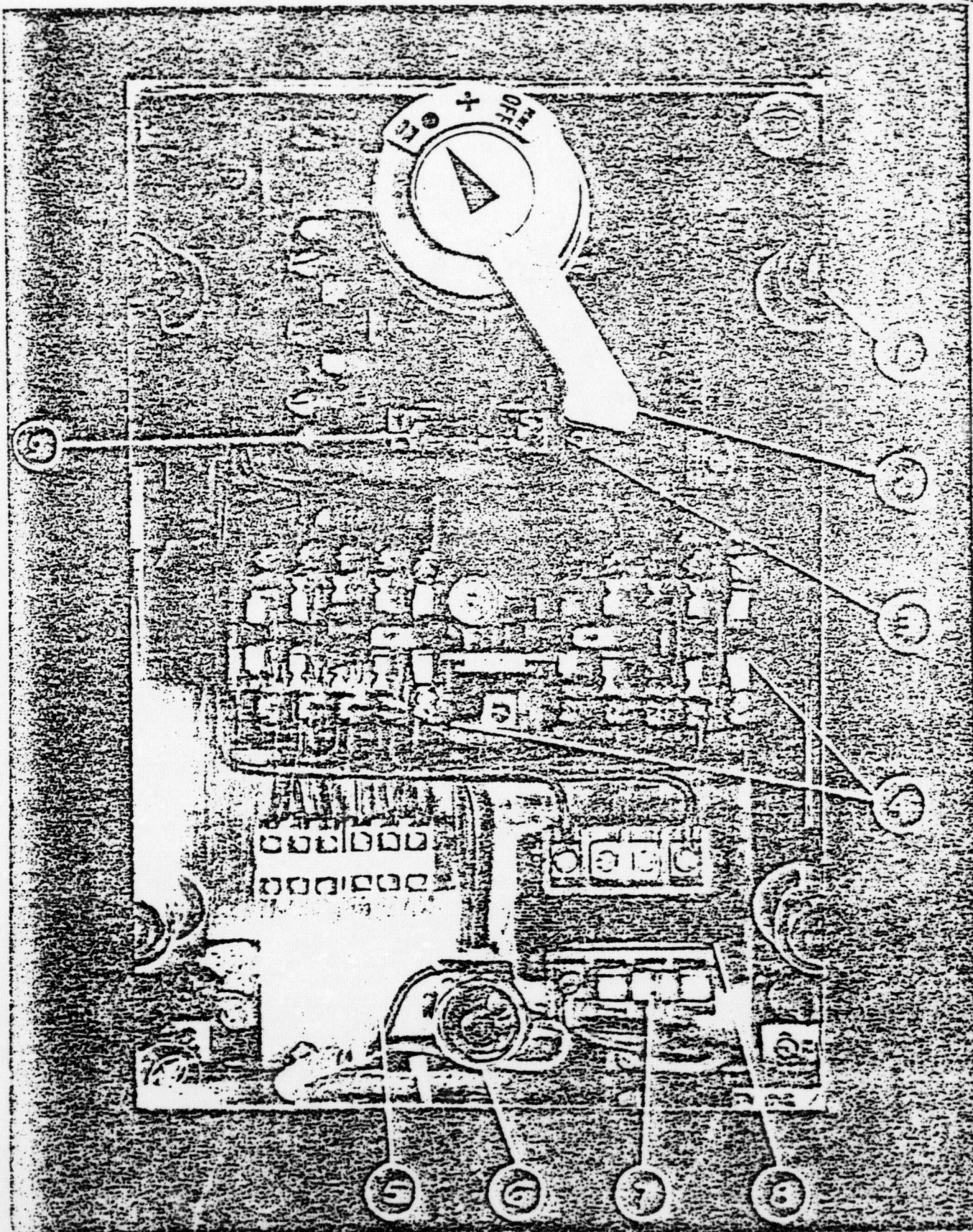
This cycle repeats itself throughout the set total curing period time at the end of which the white light comes on.

Any motor overload during the curing period will be indicated by the red pilot light.

Also the cycle will stop.

Any motor overload or short circuit during the curing period will cause the circuit breaker to be tripped and shut off the power.





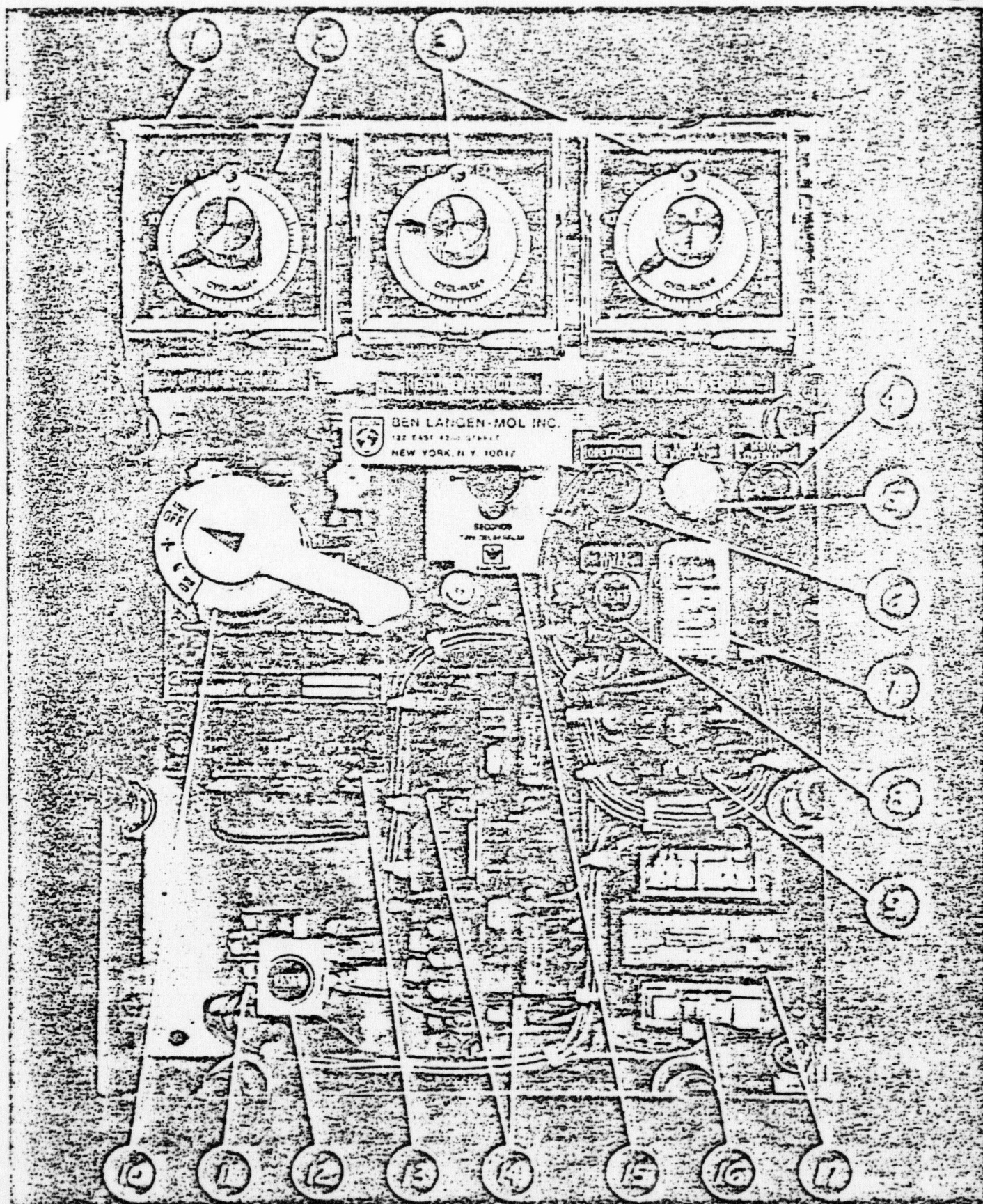




STARTER FOR MULTIPLE CONTROL  
DK-18 AND DK-20

ITEM	TYPE	DESIGNATION	HP AND VOLTAGE
1	Cr 4-150T	Enclosure	
2	Z+H3-NA	Handle	
3	PKZM3-2.5-NA	Main circuit breaker	1/2 HP 208 & 230 V
	PKZM3-1.6-NA	Main circuit breaker	1/2 HP 460 V
	PKZM3-6.3-NA	Main circuit breaker	1 1/2 HP 208 & 230 V
	PKZM3-4-NA	Main circuit breaker	1 1/2 HP 460 V
4	DiLO-22/VDIUL-NA	Contactor w/Mech interlock	
5	AN3	Terminal	
6	L2/Fb/g	Green pilot light	
7	FNM 3/10A	Fuse	
8	T25 220/440-110	25 VA control XFMR	
9	Hi 11-PKZM3	Aux. contacts	





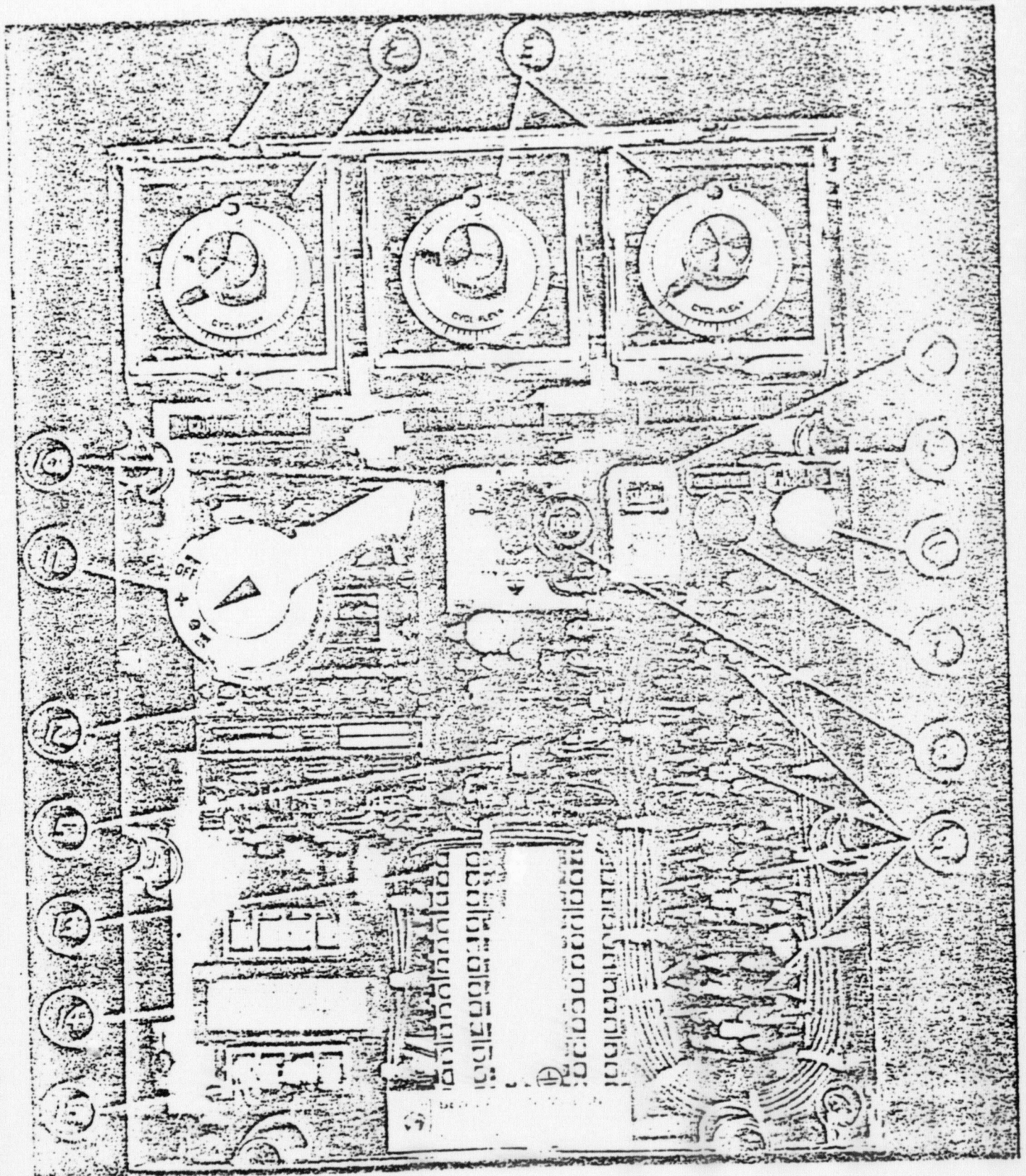




SINGLE CONTROL  
DK-18 AND DK-20

ITEM	TYPE	DESIGNATION	HP AND VOLTAGE
1	Ci-46-150T	Enclosure	
2	HP511A601-16	Eagle timer	
3	HP56A6-16	Eagle timer	
4	L2/Fb/r	Red pilot light	
5	L2/Fb/w	White pilot light	
6	L2/Fb/g	Green pilot light	
7	Dd/G/Kd-NA	Stop start P/B	
8	D/GR/K-NA	Pushbutton	
9	DiLOOL-22-NA	Control relay	
10	+a+H6	Shaft and handle	
11	ZO-3.7/K-NA	Overload	1/2 HP 208 & 220 V
	ZO-1.2/K-NA	Overload	1/2 HP 440 V
	ZO-6.6/K-NA	Overload	1 1/2 HP 208 & 220 V
	ZO-3.7/K-NA	Overload	1 1/2 HP 440 V
12	Db-a	Overload reset P/B	
13	NZM6-63/ZM6c-16/32	Circuit Breaker	1/2 HP 208 & 220 V
	NZM6-63/ZM6c-6/12	Circuit Breaker	1/2 HP 440 V
	NZM6-63/ZM6c-40/80	Circuit Brecker	1 1/2 HP 208 & 220 V
	NZM6-63/ZM6c-16/32	Circuit Breaker	1 1/2 HP 440 V
14	DiLO-22/VDIUL-NA	Contactor w/Mech interlock	
15	BR 14A6	Eagle timer	
16	FNM 1 A	Fuse	
17	T100 220/440-110	100VA control XFMR	









MULTIPLE CONTROL  
DK-18 AND DK-20

ITEM	TYPE	DESIGNATION	HP AND VOLTAGE
1	Ci-46-150T	Enclosure	
2	HP511A601-16	Eagle timer	
3	HP56A6-16	Eagle timer	
4	Dd-G/Kd-NA	Stop start P/B	
5	DiLOOL-22-NA	Control relay	
6	L2/Fb/w	White pilot light	
7	L2/Fb/g	Green pilot light	
8	D/GR/K-NA	Reset push button	
9	DiLOOL-62-NA	Control relay	
10	BR14A6	Eagle timer	
11	+a+H6	Shaft and handle	
12	NZM6-63/ZM6c-100/320	Circuit Breaker	1/2 HP 208 V
	NZM6-63/ZM6c-100/200	Circuit Breaker	1/2 HP 220 V
	NZM6-63/ZM6c-60/120	Circuit Breaker	1/2 HP 440 V
	NZM6-63/ZM6c-260/500	Circuit Breaker	1 1/2 HP 208 & 220 V
	NZM6-63/ZM6c-160/320	Circuit Breaker	1 1/2 HP 440 V
13	AN3	Control terminals	
14	T-100 220/440-110	Control transformer	
15	FNM 1 A	Fuse	







## BELAM MULTIPLE PANEL OPERATION CYCLE

Set main circuit breaker to "ON".

White pilot light - "End of Process" - "ON".

Press curing period timer "Reset" pushbutton.

Press "Start" pushbutton.

### FORWARD START

White pilot light - "End of Process" - "OFF".

Control relay CRO - "Energized".

Time relay TR1 - "Curing period" - energized.

CONTACT CRO (13-14) - CLOSED  
CONTACT CRO (23-24) - CLOSED  
CONTACT CRO (31-32) - OPEN

Green pilot light - "Operation" - "ON".

Forward contactor CRF1, CRF - energized.

CONTACT CRF1 (13-14) - CLOSED  
CONTACT CRF1 (61-62) - OPEN  
CONTACT CRF (13-14) - CLOSED  
CONTACT CRF (23-24) - CLOSED  
CONTACT CRF (61-62) - OPEN

Time relay TR4 - Reset - energized.

After 3 sec. CONTACT TR4 (6 - 7) - OPEN

Alternator relay CR1 - energized.

CONTACT CR1 (23-24) - CLOSED  
CONTACT CR1 (31-32) - OPEN  
CONTACT CR1 (13-14) - CLOSED

Time relay TR3 - "Rotating Period" - energized.

MOTOR RUNNING FORWARD - BEGINNING OF CYCLE.

RESTING

Timer TR3 times out & rotation stops.

Time relay CONTACT TR3 (3 - 4) - CLOSED

Forward contactor CRF 1, CRF out.

CONTACT CRF1 (13-14) - OPEN  
CONTACT CRF1 (61-62) - CLOSED  
CONTACT CRF (13-14) - OPEN  
CONTACT CRF (61-62) - CLOSED  
CONTACT CRF (23-24) - OPEN

Time relay TR4 - Reset - OUT.

CONTACT TR4 (6 - 7) - CLOSED

Time relay TR2 - rest period - energized.

CONTACT TR2 (6 - 8) - CLOSED

MOTOR IS NOW RESTING.



REVERSE

At the end of the resting period, time relay TR2 times out and rotation starts.

Time relay      CONTACT TR2 (4 - 5) - OPEN  
                  CONTACT TR3 (4 - 5) - CLOSED

Reverse contactor CRR1, CRR energized.

CONTACT CRR1 (43-44) - CLOSED  
CONTACT CRR1 (61-62) - OPEN  
CONTACT CRR (13-14) - CLOSED  
CONTACT CRR (61-62) - OPEN  
CONTACT CRR (71-72) - OPEN

Alternator: relay CR 1 - OUT.

CONTACT CR1 (31-32) - CLOSED  
CONTACT CR1 (13-14) - OPEN  
CONTACT CR1 (23-24) - OPEN

Time relay TR4 "Reset" - energized.

After 3 sec.      CONTACT TR4 (6 - 7) - OPEN

Time relay TR2 - Rest period - OUT.

CONTACT TR2 (6 - 8) - OPEN  
CONTACT TR2 (4 - 5) - CLOSED

Time relay TR3 - Rotating period - energized.

MOTOR IS RUNNING IN REVERSE.

RESTING

At the end of the rotating period, time relay TR3 times out and rotation stops.

Time relay            CONTACT TR3 (3 - 4) - CLOSED

Reverse contactor CRR1, CRR - OUT.

CONTACT CRR1 (43-44) - OPEN  
CONTACT CRR1 (61-62) - CLOSED

CONTACT CRR (13-14) - OPEN  
CONTACT CRR (61-62) - CLOSED  
CONTACT CRR (71-72) - CLOSED

Time relay TR4 - "Reset" - OUT.

CONTACT TR4 (6 - 7) - CLOSED

Time relay TR2 - "Rest period" - energized.

CONTACT TR2 (6 - 8) - CLOSED

MOTOR IS NOW RESTING.

FORWARD

At the end of the resting period, time relay TR2 times out.

Time relay            CONTACT TR2 (4 - 5) - OPEN

Time relay TR3 - Rotating period - OUT.

CONTACT TR3 (4 - 5) - CLOSED

Forward contactor CRF 1, CRF is energized.

CONTACT CRF1 (13-14) - CLOSED  
CONTACT CRF1 (61-62) - OPEN  
CONTACT CRF (13-14) - CLOSED  
CONTACT CRF (23-24) - CLOSED  
CONTACT CRF (61-62) - OPEN



FORWARD CONTD.

Alternator relay CR1 - energized.

CONTACT CR1 (23-24) - CLOSED  
CONTACT CR1 (31-32) - OPEN  
CONTACT CR1 (13-14) - CLOSED

Time relay TR 4 - Reset - energized.

After 3 sec. CONTACT TR4 (6 - 7) - OPEN

Time relay TR2 - rest period - OUT

CONTACT TR2 (6 - 8) - OPEN  
CONTACT TR2 (4 - 5) - CLOSED

Time relay TR3 - Rotating period - energized.

MOTOR IS RUNNING FORWARD CYCLE REPEATS.



### STARTERS

This cycle repeats itself throughout the set total curing period time at the end of which the white light comes on.

With relay CRF, CRF1 energized all forward contactors MF from the starters will be energized. Green indicating light on.

With relay CRR, CRR1 energized all reverse contactors from the starters will be energized - green indicating light on.

Any motor overload or short circuit during the curing period will cause the thermo-magnetic disconnect to be tripped and shut off the individual starter.





RECOMMENDED SPARE PARTS LIST FOR  
BELAM CONTROL PANELS

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1) STARTER COMPLETE

(Specify HP, Line Voltage when ordered)

FOR MULTIPLE CONTROL PANEL

- 10) FNM 1.OA Fuses
- 10) GL130 Bulbs
- 1) DiI OOL-62-NA-A Control relay
- 1) DiI OOL-22-NA-A Control relay
- 1) Dd-G/Kd-NA Stop start push button
  
- 1) HP511A601-16 Eagle timer (curing period)
- 1) HP56A6-16 Eagle timer (resting, rotating period)
- 1) BR13A6 Eagle timer (reset)

FOR SINGLE CONTROL PANEL

- 10) FNM 1.OA Fuses
- 10) GL 130 Bulbs
- 1) DiI OA-22-NA-A Contactor
- 1) DiI OOL-22-NA-A Control relay
- 1) ZO-...../K-NA Overload  
(Specify FLC from Motor when ordered)
- 1) +VDIUL Oa-22 Mech interlock
- 1) Dd-G/Kd-NA Stop start pushbutton
- 1) D/GR/K-NA - reset pushbutton
  
- 1) HP511A601-16 Eagle timer (curing period)
- 1) HP56A6-16 Eagle timer (resting, rotating period)
- 1) BR13A6 Eagle timer (reset)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

MEAT SYSTEMS CORPORATION,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
BEN LANGEN-MOL, INC., a New York	:	
corporation, HOMBURG, B.V., and	:	
KNUD SIMONSEN INDUSTRIES, LTD.,	:	
	:	
Defendants,	:	75 CIV. 5306 (WK)
	:	
and	:	
	:	
BEN LANGEN-MOL, INC., a Delaware	:	AFFIDAVIT OF SIDNEY DAVID
corporation,	:	
	:	
Applicant for Intervention,	:	
	:	
and	:	
	:	
CARL ADILETTI and STEPHEN ZITIN,	:	
	:	
Additional Defendants	:	
on Counterclaim.	:	

-----X

STATE OF NEW JERSEY:  
: SS:  
COUNTY OF U N I O N:

I, SIDNEY DAVID, being duly sworn, depose and say as follows:

1. I am a partner in the firm of Lerner, David, Littenberg & Samuel, a Professional Corporation, attorneys for Meat Systems Corporation, Carl Adiletti and Stephen Zitin, in the above-identified action.

2. Attached hereto as Exhibit 1 is a true copy of Defendant's Answers to Plaintiff's First Set of Interrogatories served in the case of Homburg, B.V., a corporation of the Netherlands, Plaintiff, vs. Baltz Brothers Packing, a corporation of Tennessee, Defendant,




Civil Action No. 76-133 NA-CV, pending in the United States District Court for the District of Middle Tennessee, Nashville Division.

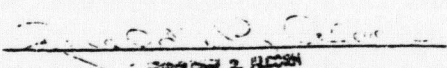
3. Attached hereto as Exhibit 2 is a true copy of a letter dated April 7, 1976, from Howard Kristol, Esq., attorney for Ben Langen-Mol, Inc., a New York corporation, received by Lerner, David, Littenberg & Samuel.

4. Attached hereto as Exhibit 3 is a true copy of Defendant's Answers to Plaintiff's First Set of Interrogatories in the case of Homburg, B.V., a corporation of the Netherlands, vs. Bryan Packing Company, a corporation of Mississippi, Civil Action No. EC 76-59 S, pending in the United States District Court for the Northern District of Mississippi, Eastern Division.

5. Attached hereto as Exhibit 4 is a true copy of the Amendment dated November 5, 1974, from the file wrapper history of the '860 patent.

  
SIDNEY DAVID

Sworn and Subscribed to  
before me this 26th day  
of July, 1976.

  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires May 20, 1979

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MIDDLE TENNESSEE  
NASHVILLE DIVISION

-----X

HOMBURG, B.V., a corporation	:	
of the Netherlands,	:	
	:	
Plaintiff,	:	CIVIL ACTION NO.
	:	76-133 NA-CV
vs.	:	
	:	
BALTZ BROTHERS PACKING, a	:	
corporation of Tennessee,	:	
	:	
Defendant.	:	

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DEFENDANT'S ANSWERS TO PLAINTIFF'S  
FIRST SET OF INTERROGATORIES

The following is in response to plaintiff's First Set of Interrogatories to defendant.

INTERROGATORY NO. A-1:

Give the full name, address, and title of each of the directors and officers of DEFENDANT.

ANSWER:

Robert Baltz, President, c/o Baltz Brothers Packing, 1612 Elm Hill Road, Nashville, Tennessee 37210; Dennis Baltz, Vice President, c/o Baltz Brothers Packing, 1612 Elm Hill Road, Nashville, Tennessee 37210; Frank Baltz, Vice President, c/o Baltz Brothers Packing, 1612 Elm Hill Road, Nashville, Tennessee 37210; Martin Baltz, Vice President, c/o Baltz Brothers Packing, 1612 Elm Hill Road, Nashville, Tennessee 37210; John Baltz, Vice President, c/o Baltz Brothers Packing, 1612 Elm Hill Road, Nashville Tennessee 37210; Warren Brown, Secretary-Treasurer, c/o Baltz Brothers Packing, 1612 Elm Hill Road, Nashville, Tennessee 37210.

EXHIBIT 1



INTERROGATORY NO. A-2:

State the period of time each PERSON named in response to Interrogatory A-1 has been employed by DEFENDANT and in what capacity each served.

ANSWER:

Robert, Dennis, Frank, Martin and John Baltz have been employed by the present defendant or its predecessor companies from 1947 to date. Warren Brown from 1968 to date.

INTERROGATORY NO. A-3:

State whether DEFENDANT is related to any other business enterprise, and if so, fully identify said enterprise, the nature of the relationship, and the officers of said enterprise by name, complete address and title, and indicate the period of time each said officer has been employed by said enterprise and in what capacity.

ANSWER:

Baltz Brothers Packing owns Kentucky Sausage Company in Nashville, Tennessee; Elm Hill Meats, Inc., in Lexington, Kentucky; and Elm Hill Meats, Inc., in Lenoir City, Tennessee.

INTERROGATORY NO. A-4:

Describe the nature of the DEFENDANT'S business.

ANSWER:

Meat processors.

INTERROGATORY NO. A-5:

State when DEFENDANT first became aware of United States Patent 3,775,134, and identify the PERSON or PERSONS having knowledge of said Patent.

INTERROGATORY NO. A-6:

State when DEFENDANT first became aware of United States Patent 3,934,860, and identify the PERSON or PERSONS having knowledge of said Patent.

ANSWER TO NOS. A-5 and A-6:

Mr. Larry Baltz first became aware of the existence of patents in approximately October-November, 1975. The defendant, through Mr. Larry Baltz, first became aware of the specific patent numbers in the letter from Browdy and Neimark dated February 13, 1976, which was sent to Baltz Brothers Packing, a copy of which was attached to the Complaint herein as Exhibit III.

INTERROGATORY NO. A-7:

Does DEFENDANT carry out the process of Patent 3,775,134, and if not, explain in detail how the meat treating process of DEFENDANT (which involves stirring or massaging the meat) differs from the process of Patent 3,775,134.

ANSWER:

No.

The following process (described in the annexed sealed envelope) is employed by defendant and involves stirring or



massaging of hams.\* With this process, and with respect to the independent claims of the process patent, sublimitations (a), (b) and (c) of Claims 1 and 11 are not practiced. Other differences are apparent, for example, comparing the process set forth with the dependent claims and the process set forth when compared to the various processes set forth in the specification of the process patent.

INTERROGATORY NO. A-8:

Ignoring the embodiment of Figs. 1 and 2 of Patent 3,934,860 state whether DEFENDANT has in its plant a machine corresponding to that of Patent 3,934,860, and state whether such a machine is used or operated to treat meat by DEFENDANT. If the answer is in the negative, please explain in detail how the meat stirring or meat massaging machine of DEFENDANT differs from that of Patent 3,934,860.

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\*The process described in the annexed sealed envelope is deemed confidential by the defendant and, therefore, is produced in a sealed envelope which can be opened by plaintiff's counsel only if plaintiff's counsel agrees to maintain same in confidence and to show it to no other person, party or entity without the express written consent of defendant or defendant's counsel and, further, with the understanding that such information is to be used only in connection with the above litigation and for no other purpose, and on the further condition that plaintiff's counsel sends defendant's counsel a letter confirming such understanding if plaintiff's counsel agrees to accept such information on such basis. If plaintiff's counsel will not agree to such undertaking, he is not to open the sealed envelope, but is to inform defendant's counsel of his decision in this regard so that the Court may consider this question before the plaintiff has an opportunity to review the sealed matter.

INTERROGATORY NO. A-9:

Please state how many meat stirring or meat massaging machines of the type referred to in Interrogatory No. A-8 or described in the answer to Interrogatory No. A-15 are in the possession of DEFENDANT. How many are on order?

INTERROGATORY NO. A-10:

Does DEFENDANT possess a machine of the type illustrated in Exhibit 4 attached to the complaint in this case? If so, how many of such machines does DEFENDANT possess.

ANSWER TO A-8 - A-10:

Defendant has two meat massagers and none on order. One meat massager was purchased from Ben Langen-Mol, and one from Meat Systems Corporation. Both of the machines are operated to practice the process set forth in the Answer to Interrogatory A-7. Neither of the meat massagers (Ben Langen-Mol's nor Meat Systems') include stirring blades having flat upper and lower surfaces as required in Claim 1 of the apparatus patent, nor is it known whether or not any of the machines employ "driving means . . . for supplying sufficient power to said shaft to impart said horizontal and vertical components of movement to chunks of meat . . . ." Also, since Claim 2 of the apparatus patent is not understood, it is believed that neither of the machines employed by the defendant have stirring means or driving means which meet the limitations of Claim 2. In addition, as of May 17, 1976, the Meat Systems machine employs blades having a different construction than those originally provided by Meat Systems Corporation. In the new configuration, the horizontal width of the blade perpendicular to its longitudinal axis first increases, starting from



the shaft, up to a maximum width at a point along the radial bl. length, and thereafter maintains the same width all the way to the end.

INTERROGATORY NO. A-11:

With regard to the use of the equipment referred to in Interrogatory No. A-10, does DEFENDANT agree that the use of such equipment provides one or more of the advantages of greater yield, faster processing, lower labor costs, more uniform product in color and flavor, superior binding in the product, fewer curing vats needed, less inventory required, less spaced needed for curing and storing, a more flow-through operation? If not, please explain. Does the use of the process referred to in Interrogatory No. A-7 provide one or more of the same advantages?

ANSWER:

Defendant has not completed sufficient testing to reach definitive conclusions with respect to the various alleged advantages set forth in this Interrogatory, other than the question of yield. In this regard, defendant has test data which it regards as confidential which shows increased yield when using meat massagers as compared to the process used previously by the defendant. With respect to the remaining alleged attributes, defendant offers the opinion that massaging does not produce faster processing, does not necessarily reduce labor costs, does not require less inventory, does not require less space for curing and storing, but might provide more uniform color and flavor, improved binding, require fewer curing vats and perhaps render a more flow-through operation.

INTERROGATORY NO. A-12:

State whether DEFENDANT has communicated with anyone regarding either or both of Patents 3,775,134 and 3,934,860, and identify all DOCUMENTS relating thereto.

ANSWER:

It attorneys. No documents exist other than those generated as a result of this lawsuit.

INTERROGATORY NO. A-13:

State whether DEFENDANT has received any communication relating to the validity of either or both of Patents 3,775,134 and 3,934,860, and identify all DOCUMENTS relating thereto.

ANSWER:

No.

INTERROGATORY NO. A-14:

State whether DEFENDANT has received any communication relating to the infringement of either or both of Patents 3,775,134 and 3,934,860, and identify all DOCUMENTS relating thereto.

ANSWER:

No.



INTERROGATORY NO. A-15:

Describe in detail all apparatus used by DEFENDANT to stir or massage its meat products during treatment and pickling thereof, and IDENTIFY all DOCUMENTS relating thereto.

INTERROGATORY NO. A-16:

Describe in detail all the methods which DEFENDANT practices to pickle its meat products using a stirring or massaging operation and IDENTIFY all DOCUMENTS relating thereto.

ANSWER TO NOS. A-15 and A-16:

See answers to Interrogatories A-7 through A-10.

INTERROGATORY NO. A-17:

IDENTIFY the PERSON in the employ of DEFENDANT having the greatest knowledge concerning the operation of DEFENDANT'S meat stirring or massaging apparatus.

ANSWER:

Larry Baltz.

INTERROGATORY NO. A-18:

IDENTIFY all employees of DEFENDANT having knowledge of the accused process and the accused apparatus, including those responsible for engineering and operation of the accused apparatus.

ANSWER:

Larry Baltz.

INTERROGATORY NO. A-19:

Were either or both of Patents 3,775,134 and 3,934,980 ever discussed by DEFENDANT'S Board of Directors and if so, please provide a summary of the discussion and IDENTIFY all DOCUMENTS relating to said discussion.

ANSWER:

N/A.

INTERROGATORY NO. A-20:

IDENTIFY all DOCUMENTS relating to the efficiency of the accused process and the accused apparatus, and IDENTIFY all DOCUMENTS relating to the efficiency of the meat stirring or massaging operation practiced by DEFENDANT and the apparatus used in practicing such process.

ANSWER:

Only the test data referred to in the answer to Interrogatory A-11.

INTERROGATORY NO. A-21:

With regard to the processes and machines referred to in Interrogatory No. A-20, describe all the features which constitute the advantages of such processes and machines; and also separately describe all the features which constitute the disadvantages of such processes and machines.

ANSWER:

See answer to Interrogatory No. A-11.



INTERROGATORY NO. A-22:

IDENTIFY all agreements with others relating to the defense of any civil action relating to either or both of the patents in suit.

ANSWER:

A hold harmless agreement with Meat Systems Corporation.

INTERROGATORY NO. A-23:

IDENTIFY all license agreements under which DEFENDANT operates relating to either or both of the accused process and the accused apparatus.

ANSWER:

None.

INTERROGATORY NO. A-24:

IDENTIFY all DOCUMENTS relating to testing to evaluate either or both of the accused process and the accused apparatus.

ANSWER:

See answer to Interrogatory No. A-11.

INTERROGATORY NO. A-25:

IDENTIFY the PERSON or PERSONS who made the decision to commercially practice the accused process; IDENTIFY the PERSON or PERSONS who made the decision to purchase and use the accused apparatus.

ANSWER:

Larry Baltz.

INTERROGATORY NO. A-26:

Did DEFENDANT ever purchase or procure merely for trial purposes the device of Patent 3,934,860? If so, was such device purchased or procured to obtain knowledge of PLAINTIFF'S process and apparatus? Based on the knowledge so obtained, did DEFENDANT then purchase unlicensed, but similar, equipment?

ANSWER:

The defendant purchased one machine from Ben Langen-Mol. This was purchased on a trial basis. At the time of its purchase, the defendant was unaware of the existence of Meat Systems Corporation. Subsequently, the defendant purchased from Meat Systems Corporation for reasons related solely to price and the fact that the equipment was an American manufactured product.

INTERROGATORY NO. A-27:

IDENTIFY all legal counsel representing DEFENDANT.

ANSWER:

GULLETT, STEELE, SANFORD, ROBINSON & MERRITT, 230 Fourth Avenue, North, Nashville, Tennessee 37219, and Of Counsel LERNER, DAVID, LITTENBERG & SAMUEL, 195 Elm Street, Westfield, New Jersey 07090.



INTERROGATORY NO. A-28:

Please state whether DEFENDANT has used a process in which meat is injected with substantially the required amount of brine for pickling, the meat is then stored without excess brine at atmospheric pressure and at the same time is subjected to at least intermittent stirring for about 5-60 minutes per hour until the meat is pickled and pliable, after which the meat is packaged. Does DEFENDANT continue to carry out such process? If DEFENDANT has not used such a process, how does DEFENDANT'S stirring or massaging process differ therefrom.

ANSWER:

See answer to Interrogatory No. A-7.

INTERROGATORY NO. A-29:

Please state whether DEFENDANT has used an apparatus for the treatment of meat which includes a rectangular container in which the meat is placed and a stirring device including a stirring shaft and a plurality of stirring blades which extend from the shaft at different levels, each such blade having a generally diamond-shaped configuration as shown in Figure 4 of Patent 3,934,860. Does DEFENDANT continue to use such an apparatus? If DEFENDANT has not used such an apparatus, how does DEFENDANT'S stirring or massaging apparatus differ therefrom.

ANSWER:

See answer to Interrogatories A-8 - A-10. The new blade referred to in the answer to Nos. A-8 - A-10 certainly does not have a generally diamond-shaped configuration as shown in the '860 patent.

INTERROGATORY NO. A-30:

If the answers to either or both of Interrogatories No. A-28 and No. A-29 is (are) to the affirmative, IDENTIFY with respect to each the PERSONS most familiar with the usage thereof and the product produced thereby, respectively, giving as to each their full names, last known addresses and positions, if any, with the DEFENDANT.

ANSWER:

N/A, but the person most familiar with the product would be Larry Baltz.

INTERROGATORY NO. A-31:

IDENTIFY all advertisements of which the DEFENDANT is aware relating to either or both of the process and apparatus mentioned in Interrogatories No. A-28 and No. A-29 or described in answer to Interrogatories No. A-15 and No. A-16.

ANSWER:

None.

INTERROGATORY NO. A-32:

IDENTIFY all advertisements relating to the meat products produced by DEFENDANT according to either or both of the process and apparatus referred to in Interrogatories No. A-28 and No. A-29 or described in answer to Interrogatories No. A-15 and No. A-16.

ANSWER:

None.



INTERROGATORY NO. A-33:

State the earliest dates when DEFENDANT, respectively, commercially used the process referred to in Interrogatory No. A-28 and the apparatus referred to in Interrogatory No. A-29, or those described in answers to Interrogatories No. A-15 and No. A-16 and IDENTIFY the PERSONS having knowledge of these acts in the employ of DEFENDANT.

ANSWER:

Approximately September, 1975, when the Ben Langen-Mol machine was employed; Larry Baltz.

INTERROGATORY NO. A-34:

IDENTIFY all DOCUMENTS in the possession, custody or control of DEFENDANT which describe the attributes of, respectively, the process referred to in Interrogatory No. A-28 and the apparatus referred to in Interrogatory No. A-29, or those described in answers to Interrogatories No. A-15 and No. A-16.

ANSWER:

Test date in answer to Interrogatory No. A-11.

INTERROGATORY NO. A-35:

State when DEFENDANT first became aware of its possible infringement of, respectively, the subject matter of Patents 3,775,134 and 3,934,860.

ANSWER:

February of 1976, when defendant received the Browdy and Neimark letter.

INTERROGATORY NO. A-36:

Was a validity or prior art search of either or both of U.S. Patents 3,775,134 and 3,934,860 ever conducted on behalf of DEFENDANT or on behalf of any other PERSON, the results of which are known to DEFENDANT?

ANSWER:

No.

INTERROGATORY NO. A-37:

If the answer to Interrogatory No. A-36 is in the affirmative, with respect to each such search, IDENTIFY the name and address of the PERSON who conducted such search; the inclusive dates of such search; each patent considered to be relevant; each publication considered to be relevant; IDENTIFY the PERSON or PERSONS who requested the search; IDENTIFY each written report made for such search; and IDENTIFY the name and present address of each PERSON in possession of such a written report.

ANSWER:

N/A.

INTERROGATORY NO. A-38:

If the DEFENDANT has communicated with any PERSON or organization (other than PLAINTIFF herein) with respect to either or both of U.S. Patents 3,775,134 and 3,934,860, please IDENTIFY all such PERSONS or organizations, the date of such communications, and IDENTIFY all DOCUMENTS relating to such communications.



ANSWER:

Just counsel.

INTERROGATORY NO. A-39:

IDENTIFY with sufficient particularity to support a Motion to Produce, all DOCUMENTS presently known to DEFENDANT which relate to the performance and/or operation of, respectively, the process referred to in Interrogatory No. A-28 and the apparatus referred to in Interrogatory No. A-29, or those described in answers to Interrogatories No. A-15 and No. A-16 and IDENTIFY the PERSONS having knowledge of these acts in the employ of DEFENDANT

ANSWER:

The only documentation which is responsive to this Interrogatory is the test data referred to previously in the answer to Interrogatory No. A-11, portions of which bear various dates. If it is subsequently determined that such information is discoverable its identification is assured and known to the defendant and, for purposes of a Motion to Produce, can be accurately characterized as "test data".

INTERROGATORY NO. A-40:

With respect to the products manufactured by DEFENDANT following the process referred to in Interrogatory No. A-28 and/or using the apparatus referred to in Interrogatory No. A-29, or those described in answers to Interrogatories No. A-15 and No. A-16 and IDENTIFY each such meat product in the common descriptive terms used by DEFENDANT to designate and distinguish

such types of meat products from one another, and with regard to each, give the names and addresses of persons most familiar with the manufacture and sale respectively of each such type of meat product.

ANSWER:

"Elm Hill Cooked Hams" and "Elm Hill Smoked Hams". Larry Baltz.

INTERROGATORY NO. A-41:

Does DEFENDANT concede that Patent 3,775,134 is valid? If DEFENDANT does not so concede, upon what basis does DEFENDANT reach its conclusion? If DEFENDANT does not concede that said patent is valid, IDENTIFY all DOCUMENTS and THINGS which DEFENDANT maintains supports its position.

ANSWER:

No.

(A) Prior art (35 USC 102 and/or 103), including, at the present time, U.S. Patents 3,076,713; 1,271,962; 2,180,165; 3,436,230; 3,663,233; 522,939; 1,134,299; 2,907,662; 2,305,480; 2,299,946; 3,565,639; 3,296,953; 3,347,679; 1,033,269; 3,149,554; 2,903,366; 2,880,663; 2,629,311; 865,010; 7766; 2,015,297; 203,681; 2,182,891; 2,596,067; 2,812,261; 2,824,809; 2,888,351; 2,299,924; 2,598,599; 2,508,864; 1,779,346; and 2,368,650.

(B) 35 USC 112.

(C) Other defenses which may become apparent during discovery and which will be provided as a supplemental answer to Interrogatories as formulated.



Other documents beside patents relevant to defenses include the file wrapper history of U.S. Patent 3,775,134.

INTERROGATORY NO. A-42:

Does DEFENDANT concede that Patent No. 3,934,860 is valid? If DEFENDANT does not so concede, upon what basis does DEFENDANT so reach its conclusion? If DEFENDANT does not concede that said patent is valid, IDENTIFY all DOCUMENTS and THINGS which DEFENDANT maintains supports its position.

ANSWER:

No. See answer to Interrogatory No. A-41 above, plus U.S. Patents 2,657,912; 3,318,583; 3,488,038, and the file wrapper history of U.S. Patent 3,934,860.

INTERROGATORY NO. A-43:

IDENTIFY the PERSONS and companies from whom DEFENDANT purchased equipment to carry out the process referred to in Interrogatory No. A-28 or the process described in answer to Interrogatory No. A-15.

INTERROGATORY NO. A-44:

IDENTIFY the PERSONS and companies from who DEFENDANT purchased a machine of the type referred to in Interrogatory No. A-29 or of the type described in answer to Interrogatory No. A-16.

ANSWER TO A-43 and A-44:

Ben Langen-Mol and Meat Systems Corporation.

INTERROGATORY NO. A-45:

With respect to each of the PERSONS and companies listed in the answers to Interrogatories No. A-43 and No. A-44, did DEFENDANT inquire of such PERSONS and companies whether each was licensed under Patent 3,775,134 or Patent 3,934,860; and if so, please state the details of the response given to DEFENDANT by such PERSONS or companies and IDENTIFY all DOCUMENTS relating thereto.

ANSWER:

No.

INTERROGATORY NO. A-46:

IDENTIFY in sufficient detail to support a Motion to Produce the same, each and every DOCUMENT and physical exhibit and THING consulted or used in preparing the responses to these Interrogatories, not previously identified. and IDENTIFY each PERSON assisting in the preparation of answers to these Interrogatories.

ANSWER:

None other than documents specifically identified. Larry Baltz.



BALTZ BROTHERS PACKING

DATED: 5-14-76BY Dennis BaltzSTATE OF TENNESSEE:  
COUNTY OF DAVIDSON : SS:

On this 19 day of May, 1976, before me appeared  
DENNIS BALTZ to me known and known to me to be  
 the person described in and who executed the foregoing instrument  
 on behalf of Baltz Brothers Packing and he acknowledged the same  
 to be his free act and deed.

Martha L. [Signature]  
 NOTARY PUBLIC  
 Comm. expires 2/1/80

All objections herein were made by the attorneys for the  
 defendant.

GULLETT, STEELE, SANFORD,  
 ROBINSON & MERRITT  
 Attorneys for Defendant  
 230 Fourth Avenue, North  
 Nashville, Tennessee 37219

DATED: 5/14/76BY [Signature]  
SIDNEY DAVID, Of Counsel

OF COUNSEL:

LERNER, DAVID, LITTENBERG & SAMUEL  
 A Professional Corporation  
 195 Elm Street  
 Westfield, New Jersey 07090

LAW OFFICES  
LERNER, DAVID, LITTENDERO & SAMUEL  
A PROFESSIONAL CORPORATION  
195 ELM STREET  
WESTFIELD, NEW JERSEY 07090

RESPONSE TO INTERROGATORY A-7  
FOR ATTORNEYS' EYES ONLY AS  
SPECIFIED IN FOOTNOTE ON PAGE 4



CERTIFICATE OF SERVICE

I hereby certify that a true copy of the within DEFENDANT'S ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES was served upon the attorneys for the plaintiff, WILLIS & KNIGHT, 700 Union Street, Nashville, Tennessee 37219, and BROWDY AND NEIMARK, 1233 Munsey Building, Washington, D.C. 20004, by first class mail, postage prepaid, this       day of May, 1976.

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A-101

HOWARD G. KRISTOL

ATTORNEY AT LAW

75 ROCKEFELLER PLAZA

NEW YORK, N. Y. 10019

212 541-6310

April 7, 1976

Sidney David, Esq.  
Lerner David Littenberg & Samuel  
195 Elm Street  
Westfield, New Jersey 07090

Meat Systems Corporation v.  
Ben Langen-Mol, Inc., et al.

Dear Mr. David:

I received in the mail this morning a copy of a purported Amended Complaint Under Rule 15 mailed by your office. I am not aware of any order authorizing service of an amended complaint, and I am not authorized at this time to consent to service of an amended complaint. After reviewing the document, I will be in a better position to advise my client whether or not to enter into an appropriate stipulation consenting to service. In the meantime, however, I am notifying you that my client does not intend to accept service of the document or to serve a responsive pleading.

Very truly yours,

*Howard G. Kristol*  
Howard G. Kristol

cc: Bell, Wolkowitz, Beckman & Klee  
Munson and Fiddler  
Browdy and Neimark  
Brooks Haidt Haffner & Delahunty

RECEIVED

APR 8 1976

111 & S

EXHIBIT 2



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

-----X  
HOMBURG, B.V., a corporation :  
of the Netherlands, :  
Plaintiff, :  
vs. : CIVIL ACTION NO.  
: EC 76-59 S  
BRYAN PACKING COMPANY, a :  
corporation of Mississippi, :  
Defendant. :  
-----X

DEFENDANT'S ANSWERS TO PLAINTIFF'S  
FIRST SET OF INTERROGATORIES

The following is in response to plaintiff's First Set of  
Interrogatories to defendant.

INTERROGATORY NO. A-1:

Give the full name, address, and title of each of the  
directors and officers of DEFENDANT.

ANSWER:

George W. Bryan, President and director, c/o Bryan Packing  
Company, P.O. Box 1177, West Point, Mississippi 39773; Rufe M.  
Lamon, Executive Vice President and director, c/o Bryan Packing  
Company, P.O. Box 1177, West Point Mississippi 39773; Robert D.  
Bryan, Secretary and director, c/o Bryan Packing Company, P.O.  
Box 1177, West Point Mississippi 39773; C. M. Miller, Treasurer  
and director, c/o Bryan Packing Company, P.O. Box 1177, West  
Point, Mississippi 39773; Gordon H. Newman, Vice President and  
director, c/o Consolidated Foods, 135 S. LaSalle Street, Chicago,

EXHIBIT 3

Illinois; James R. Carlson, Assistant Secretary and director,  
c/o Consolidated Foods, 135 S. LaSalle Street, Chicago, Illinois.

INTERROGATORY NO. A-2:

State the period of time each PERSON named in response to Interrogatory A-1 has been employed by DEFENDANT and in what capacity each served.

ANSWER:

George W. Bryan - January, 1965, to present;  
Rufe M. Lamont - April, 1946, to present;  
Robert D. Bryan, April, 1957, to present;  
C. M. Miller - September, 1957, to present;  
Gordon H. Newman and James R. Carlson - from the time that Bryan Packing Company became a subsidiary of Consolidated Foods to present.

INTERROGATORY NO. A-3:

State whether DEFENDANT is related to any other business enterprise, and if so, fully identify said enterprise, the nature of the relationship, and the officers of said enterprise by name, complete address and title, and indicate the period of time each said officer has been employed by said enterprise and in what capacity.

ANSWER:

Defendant is a wholly owned subsidiary of Consolidated Foods, 135 South LaSalle Street, Chicago, Illinois. Defendant objects



to the remaining portions of Interrogatory No. A-3 which call for the details of the officers and times of employment of the officers of Consolidated Foods on the basis that such information is irrelevant and immaterial to the present action and not calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. A-4:

Describe the nature of the DEFENDANT'S business.

ANSWER:

Meat packer.

INTERROGATORY NO. A-5:

State when DEFENDANT first became aware of United States Patent 3,775,134, and identify the PERSON or PERSONS having knowledge of said Patent.

ANSWER:

Approximately January-February, 1976; T. C. Christopher.

INTERROGATORY NO. A-6:

State when DEFENDANT first became aware of United States Patent 3,934,860, and identify the PERSON or PERSONS having knowledge of said Patent.

ANSWER:

Approximately February-March, 1976; T. C. Christopher.



INTERROGATORY NO. A-7:

Does DEFENDANT carry out the process of Patent 3,775,134 and if not, explain in detail how the meat treating process of DEFENDANT (which involves stirring or massaging the meat) differs from the process of Patent 3,775,134.

ANSWER:

No. The following processes (described in the annexed sealed envelope) are employed by defendant and involve stirring or massaging of hams.\* With respect to the first product, and with respect to the independent claims of the process patent, sublimitations (a), (b) and (c) of Claims 1 and 11 are not practiced. With respect to the second product, and with respect to the independent claims of the process patent, sublimitations (a), (b) and (c) of Claims 1 and 11 are not practiced. With respect to the third product, and with respect to the independent claims of the process patent, sublimitations (a) and (b) of Claims 1 and 11 are not practiced. Other differences are apparent, for example, comparing the processes set forth with the dependent claim and the processes set forth when compared to the various processes set forth in the specification of the process patent.

---

\*The processes described in the annexed sealed envelope are deemed confidential by the defendant and, therefore, are produced in a sealed envelope which can be opened by plaintiff's counsel only if plaintiff's counsel agrees to maintain same in confidence and to show them to no other person, party or entity without the express written consent of defendant or defendant's counsel and, further, with the understanding that such information is to be used only in connection with the above litigation and for no other purpose, and on the further condition that plaintiff's counsel send defendant's counsel a letter confirming such understanding if plaintiff's counsel agrees to accept such information on such basis. If plaintiff's counsel will not agree to such undertaking, he is not to open the sealed envelope, but is to inform defendant's counsel of his decision in this regard so that the Court may consider this question before the plaintiff has an opportunity to review the sealed matter.



INTERROGATORY NO. A-8:

Ignoring the embodiment of Figs. 1 and 2 of Patent 3,934,860, state whether DEFENDANT has in its plant a machine corresponding to that of Patent 3,934,860, and state whether such a machine is used or operated to treat meat by DEFENDANT. If the answer is in the negative, please explain in detail how the meat stirring or meat massaging machine of DEFENDANT differs from that of Patent 3,934,860.

INTERROGATORY NO. A-9:

Please state how many meat stirring or meat massaging machines of the type referred to in Interrogatory No. A-8 or described in the answer to Interrogation [sic] No. A-15 are in the possession of DEFENDANT. How many are on order.

INTERROGATORY NO. A-10:

Does DEFENDANT possess a machine of the type illustrated in Exhibit 4 attached to the complaint in this case? If so, how many of such machines does DEFENDANT possess.

ANSWER TO A-8 - A-10:

Defendant has ten meat massagers and none on order. One meat massager was purchased from Ben Langen-Mol, and nine meat massagers from Meat Systems Corporation. All ten of the machines are operated to practice the processes set forth in the Answer to Interrogatory A-7. None of the meat massagers (Ben Langen-Mol's nor Meat Systems') include stirring blades having flat upper and lower surfaces as required in Claim 1 of the apparatus patent, nor is it known whether or not any of the machines employ "driving means . . . for supplying sufficient power to said shaft to impart

said horizontal and vertical components of movement to chunks of meat . . . ." Also, since Claim 2 of the apparatus patent is not understood, it is believed that none of the ten machines employed by the defendant have stirring means or driving means which meet the limitations of Claim 2.

INTERROGATORY NO. A-11:

With regard to the use of the equipment referred to in Interrogatory No. A-10, does DEFENDANT agree that the use of such equipment provides one or more of the advantages of greater yield, faster processing, lower labor costs, more uniform product in color and flavor, superior binding in the product, fewer curing vats needed, less inventory required, less space needed for curing and storing, a more flow-through operation? If not, please explain. Does the use of the process referred to in Interrogatory No. A-7 provide one or more of the same advantages?

ANSWER:

Defendant has not completed sufficient testing to reach conclusions with respect to the various alleged advantages set forth in this Interrogatory, although it appears that binding is superior as compared to a non-massaged product.

INTERROGATORY NO. A-12:

State whether DEFENDANT has communicated with anyone regarding either or both of Patents 3,775,134 and 3,934,860, and identify all DOCUMENTS relating thereto.



ANSWER:

Defendant spoke to Mr. Gordon Newman at Consolidated Foods and its counsel, Lerner, David, Littenberg & Samuel.

INTERROGATORY NO. A-13:

State whether DEFENDANT has received any communication relating to the validity of either or both of Patents 3,775,134 and 3,934,860, and identify all DOCUMENTS relating thereto.

ANSWER:

None.

INTERROGATORY NO. A-14:

State whether DEFENDANT has received any communication relating to the infringement of either or both of Patents 3,775,134 and 3,934,860, and identify all DOCUMENTS relating thereto.

ANSWER:

None.

INTERROGATORY NO. A-15:

Describe in detail all apparatus used by DEFENDANT to stir or massage its meat products during treatment and pickling thereof, and IDENTIFY all DOCUMENTS relating thereto.

INTERROGATORY NO. A-16:

Describe in detail all the methods which DEFENDANT practices to pickle its meat products using a stirring or massaging operation and IDENTIFY all DOCUMENTS relating thereto.

ANSWER TO NOS. A-15 and A-16:

See answers to Interrogatories A-7 through A-10.

INTERROGATORY NO. A-17:

IDENTIFY the PERSON in the employ of DEFENDANT having the greatest knowledge concerning the operation of DEFENDANT'S meat stirring or massaging apparatus.

ANSWER:

T. C. Christopher.

INTERROGATORY NO. A-18:

IDENTIFY all employees of DEFENDANT having knowledge of the accused process and the accused apparatus, including those responsible for engineering and operation of the accused apparatus.

ANSWER:

T. C. Christopher, Preston Shurden, Kenneth Ware, and Art Nolan.

INTERROGATORY NO. A-19:

Were either or both of Patents 3,775,134 and 3,934,980 ever discussed by DEFENDANT'S Board of Directors and if so,



please provide a summary of the discussion and IDENTIFY all DOCUMENTS relating to said discussion.

ANSWER:

No.

INTERROGATORY NO. A-20:

IDENTIFY all DOCUMENTS relating to the efficiency of the accused process and the accused apparatus, and IDENTIFY all DOCUMENTS relating to the efficiency of the meat stirring or massaging operation practiced by DEFENDANT and the apparatus used in practicing such process.

ANSWER:

Some inconclusive test data exists, but its production is objected to on the basis that it contains confidential information.

INTERROGATORY NO. A-21:

With regard to the processes and machines referred to in Interrogatory No. A-20, describe all the features which constitute the advantages of such processes and machines; and also separately describe all the features which constitute the disadvantages of such processes and machines.

ANSWER:

See answer to Interrogatory No. A-11.

INTERROGATORY NO. A-22:

IDENTIFY all agreements with others relating to the defense of any civil action relating to either or both of the patents in suit.

ANSWER:

A hold harmless agreement between Meat Systems Corporation and Bryan Packing Company.

INTERROGATORY NO. A-23:

IDENTIFY all license agreements under which DEFENDANT operates relating to either or both of the accused process and the accused apparatus.

ANSWER:

None.

INTERROGATORY NO. A-24:

IDENTIFY all DOCUMENTS relating to testing to evaluate either or both of the accused process and the accused apparatus.

ANSWER:

See answer to Interrogatory No. A-20.

INTERROGATORY NO. A-25:

IDENTIFY the PERSON or PERSONS who made the decision to commercially practice the accused process; IDENTIFY the PERSON or PERSONS who made the decision to purchase and use the accused apparatus.



ANSWER:

T. C. Christopher.

INTERROGATORY NO. A-26:

Did DEFENDANT ever purchase or procure merely for trial purposes the device of Patent 3,934,860? If so, was such device purchased or procured to obtain knowledge of PLAINTIFF'S process and apparatus? Based on the knowledge so obtained, did DEFENDANT then purchase uncensored, but similar, equipment?

ANSWER:

The defendant purchased one machine from Ben Langen-Mol. This was purchased on a trial basis. At the time of its purchase, the defendant was unaware of the existence of Meat Systems Corporation. Subsequently, the defendant purchased from Meat Systems Corporation for reasons related solely to price and the fact that the equipment was an American manufactured product.

INTERROGATORY NO. A-27:

IDENTIFY all legal counsel representing DEFENDANT.

ANSWER:

EDWARDS and STOREY, 129 E. Jordon Avenue, West Point, Mississippi 39773, and Of Counsel, LERNER, DAVID, LITTENBERG & SAMUEL, 195 Elm Street, Westfield, New Jersey 07090.

INTERROGATORY NO. A-28:

Please state whether DEFENDANT has used a process in which meat is injected with substantially the required amount of brine for pickling, the meat is then stored without excess brine at atmospheric pressure and at the same time is subjected to at least intermittent stirring for about 5-60 minutes per hour until the meat is pickled and pliable, after which the meat is packaged. Does DEFENDANT continue to carry out such process? If DEFENDANT has not used such a process, how does DEFENDANT'S stirring or massaging process differ therefrom.

ANSWER:

See answer to Interrogatory No. A-7 in which all processes are described.

INTERROGATORY NO. A-29:

Please state whether DEFENDANT has used an apparatus for the treatment of meat which includes a rectangular container in which the meat is placed and a stirring device including a stirring shaft and a plurality of stirring blades which extend from the shaft at different levels, each such blade having a generally diamond-shaped configuration as shown in Figure 4 of Patent 3,934,860. Does DEFENDANT continue to use such an apparatus? If DEFENDANT has not used such an apparatus, how does DEFENDANT'S stirring or massaging apparatus differ therefrom.

ANSWER:

See answer to Interrogatory Nos. A-8 - A-10.



INTERROGATORY NO. A-30:

If the answers to either or both of Interrogatories No. A-28 and No. A-29 is (are) to the affirmative, IDENTIFY with respect to each the PERSONS most familiar with the usage thereof and the product produced thereby, respectively, giving as to each their full names, last known addresses and positions, if any, with the DEFENDANT.

ANSWER:

The person most familiar with the processes described in the answer to Interrogatory No. A-7 and the apparatus described in the answer to Interrogatory Nos. A-8 - A-10 is T. C. Christopher.

INTERROGATORY NO. A-31:

IDENTIFY all advertisements of which the DEFENDANT is aware relating to either or both of the process and apparatus mentioned in Interrogatories No. A-28 and No. A-29 or described in answer to Interrogatories No. A-15 and No. A-16.

ANSWER:

None.

INTERROGATORY NO. A-32:

IDENTIFY all advertisements relating to the meat products produced by DEFENDANT according to either or both of the process and apparatus referred to in Interrogatories No. A-28 and No. A-29 or described in answer to Interrogatories No. A-15 and No. A-16.

ANSWER:

None.

INTERROGATORY NO. A-30:

If the answers to either or both of Interrogatories No. A-28 and No. A-29 is (are) to the affirmative, IDENTIFY with respect to each the PERSONS most familiar with the usage thereof and the product produced thereby, respectively, giving as to each their full names, last known addresses and positions, if any, with the DEFENDANT.

ANSWER:

The person most familiar with the processes described in the answer to Interrogatory No. A-7 and the apparatus described in the answer to Interrogatory Nos. A-8 - A-10 is T. C. Christopher.

INTERROGATORY NO. A-31:

IDENTIFY all advertisements of which the DEFENDANT is aware relating to either or both of the process and apparatus mentioned in Interrogatories No. A-28 and No. A-29 or described in answer to Interrogatories No. A-15 and No. A-16.

ANSWER:

None.

INTERROGATORY NO. A-32:

IDENTIFY all advertisements relating to the meat products produced by DEFENDANT according to either or both of the process and apparatus referred to in Interrogatories No. A-28 and No. A-29 or described in answer to Interrogatories No. A-15 and No. A-16.

ANSWER:

None.



INTERROGATORY NO. A-33:

State the earliest dates when DEFENDANT, respectively, commercially used the process referred to in Interrogatory No. A-28 and the apparatus referred to in Interrogatory No. A-29, or those described in answers to Interrogatories No. A-15 and No. A-16 and IDENTIFY the PERSONS having knowledge of these acts in the employ of DEFENDANT.

ANSWER:

Defendant began commercial use of the processes referred to in the answer to Interrogatory No. A-7 and the apparatus identified in the answer to Interrogatory Nos. A-8 - A-10 in November-December, 1975, and the person most familiar therewith is T. C. Christopher.

INTERROGATORY NO. A-34:

IDENTIFY all DOCUMENTS in the possession, custody or control of DEFENDANT which describe the attributes of, respectively, the process referred to in Interrogatory No. A-23 and the apparatus referred to in Interrogatory No. A-29, or those described in answers to Interrogatories No. A-15 and No. A-16.

ANSWER:

None.

INTERROGATORY NO. A-35:

State when DEFENDANT first became aware of its possible infringement of, respectively, the subject matter of Patents 3,775,134 and 3,934,860.

ANSWER:

In the summer of 1975, Mr. Bonner and Mr. Yelton of Ben Langen-Mol made the defendant aware of a possible infringement situation, although the defendant does not recall what patent or patents were mentioned.

INTERROGATORY NO. A-36:

Was a validity or prior art search of either or both of U.S. Patents 3,775,134 and 3,934,860 ever conducted on behalf of DEFENDANT or on behalf of any other PERSON, the results of which are known to DEFENDANT?

ANSWER:

No.

INTERROGATORY NO. A-37:

If the answer to Interrogatory No. A-36 is in the affirmative with respect to each such search, IDENTIFY the name and address of the PERSON who conducted such search; the inclusive dates of such search; each patent considered to be relevant; each publication considered to be relevant; IDENTIFY the PERSON or PERSONS who requested the search; IDENTIFY each written report made for such search; and IDENTIFY the name and present address of each PERSON in possession of such a written report.

ANSWER:

N/A.



INTERROGATORY NO. A-38:

If the DEFENDANT has communicated with any PERSON or organization (other than PLAINTIFF herein) with respect to either or both of U.S. Patents 3,775,134 and 3,934,860, please IDENTIFY all such PERSONS or organizations, the date of such communications, and IDENTIFY all DOCUMENTS relating to such communications.

ANSWER:

Gordon Newman, Consolidated Foods (no documentation), and counsel, primarily Lerner, David, Littenberg & Samuel - documentation involved was copies of the pleadings thusfar generated as a result of the present action and the hold harmless agreement referred to in the answer to Interrogatory No. A-22.

INTERROGATORY NO. A-39:

IDENTIFY with sufficient particularity to support a Motion to Produce, all DOCUMENTS presently known to DEFENDANT which relate to the performance and/or operation of, respectively, the process referred to in Interrogatory No. A-28 and the apparatus referred to in Interrogatory No. A-29, or those described in answers to Interrogatories No. A-15 and No. A-16 and IDENTIFY the PERSONS having knowledge of these acts in the employ of DEFENDANT.

ANSWER:

The only documentation which is responsive to this Interrogatory is the incomplete test data referred to previously in Interrogatory No. A-11, portions of which bear various dates. If it is subsequently determined that such information is discoverable its identification is assured and known to the defendant and, for purposes of a Motion to Produce, can be accurately characterized as "test data".

INTERROGATORY NO. A-40:

With respect to the products manufactured by DEFENDANT following the process referred to in Interrogatory No. A-23 and/or using the apparatus referred to in Interrogatory No. A-29, or those described in answers to Interrogatories No. A-15 and No. A-16 and IDENTIFY each such meat product in the common descriptive terms used by DEFENDANT to designate and distinguish such types of meat products from one another, and with regard to each, give the names and addresses of PERSONS most familiar with the manufacture and sale respectively of each such type of meat product.

ANSWER:

With respect to the products identified in the answer to Interrogatory No. A-7, the designations are "Smokey Hollow Round"; "Smokey Hollow Flat"; "Smokey Hollow Junior"; "Smokey Hollow Gem"; "Bryan Canned Hams (3 or 5 pound)", and the person most familiar with the manufacture is T. C. Christopher.

INTERROGATORY NO. A-41:

Does DEFENDANT concede that Patent 3,775,134 is valid? If DEFENDANT does not so concede, upon what basis does DEFENDANT reach its conclusion? If DEFENDANT does not concede that said patent is valid, IDENTIFY all DOCUMENTS and THINGS which DEFENDANT maintains supports its position.

ANSWER:

No.

(A) Prior art (35 USC 102 and/or 103), including, at the present time, U.S. Patents 3,076,713; 1,271,962; 2,180,165;



3,436,230; 3,663,233; 522,939; 1,134,299; 2,907,662; 2,303,480;  
2,299,946; 3,565,639; 3,296,953; 3,347,679; 1,033,269; 3,149,554;  
2,903,366; 2,880,663; 2,629,311; 865,010; 7766; 2,015,297; 203,681;  
2,182,891; 2,596,067; 2,812,261; 2,824,809; 2,888,351; 2,299,946;  
2,598,599; 2,508,864; 1,779,346; and 2,868,650.

(B) 35 USC 112.

(C) Other defenses which may become apparent during discovery and which will be provided as a supplemental answer to Interrogatories as formulated.

Other documents beside patents relevant to defenses include the file wrapper history of U.S. Patent 3,775,134.

INTERROGATORY NO. A-42:

Does DEFENDANT concede that Patent No. 3,934,860 is valid? If DEFENDANT does not so concede, upon what basis does DEFENDANT so reach its conclusion? If DEFENDANT does not concede that said patent is valid, IDENTIFY all DOCUMENTS and THINGS which DEFENDANT maintains supports its position.

ANSWER:

No. See answer to Interrogatory No. A-41 above, plus U.S. Patents 2,657,912; 3,318,583; 3,488,038, and the file wrapper history of U.S. Patent 3,934,860.

INTERROGATORY NO. A-43:

IDENTIFY the PERSONS and companies from whom DEFENDANT purchased equipment to carry out the process referred to in Interrogatory No. A-28 or the process described in answer to Interrogatory No. A-15.

INTERROGATORY NO. A-44:

IDENTIFY the PERSONS and companies from who DEFENDANT purchased a machine of the type referred to in Interrogatory No. A-29 or of the type described in answer to Interrogatory No. A-16.

ANSWER TO A-43 and A-44:

Ben Langen-Mol and Meat Systems Corporation.

INTERROGATORY NO. A-45:

With respect to each of the PERSONS and companies listed in the answers to Interrogatories No. A-43 and No. A-44, did DEFENDANT inquire of such PERSONS and companies whether each was licensed under Patent 3,775,134 or Patent 3,934,860; and if so, please state the details of the response given to DEFENDANT by such PERSONS or companies and IDENTIFY all DOCUMENTS relating thereto.

ANSWER:

No.

INTERROGATORY NO. A-46:

IDENTIFY in sufficient detail to support a Motion to Produce the same, each and every DOCUMENT and physical exhibit and THING consulted or used in preparing the responses to these Interrogatories, not previously identified, and IDENTIFY each PERSON assisting in the preparation of answers to these Interrogatories.



ANSWER:

None other than documents specifically identified. T. C. Christopher and J. B. Stroud.

BRYAN PACKING COMPANY

DATED: \_\_\_\_\_

by \_\_\_\_\_

STATE OF MISSISSIPPI:

: SS:

COUNTY OF \_\_\_\_\_

:

On this \_\_\_\_\_ day of May, 1976, before me appeared \_\_\_\_\_ to me known and known to me to be the person described in and who executed the foregoing instrument on behalf of Bryan Packing Company and he acknowledged the same to be his free act and deed.

\_\_\_\_\_  
NOTARY PUBLIC

All objections herein were made by the attorneys for the defendant.

EDWARDS AND STOREY  
Attorneys for Defendant  
129 E. Jordan Avenue  
West Point, Mississippi 39773

DATED: 5/14/76

by [Signature]

SIDNEY DAVID, Of Counsel

OF COUNSEL:

LERNER, DAVID, LITTENBERG & SAMUEL  
A Professional Corporation  
195 Elm Street  
Westfield, New Jersey 07090

LAW OFFICES  
JENNER, DAVID, LITTENBERG & SAMUEL  
A PROFESSIONAL CORPORATION  
105 ELM STREET  
WESTFIELD, NEW JERSEY 07090

RESPONSE TO INTERROGATORY A-7  
FOR ATTORNEYS' EYES ONLY AS  
SPECIFIED IN FOOTNOTE ON PAGE 4



CERTIFICATE OF SERVICE

I hereby certify that a true copy of the within DEFENDANT'S ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES were served upon the attorneys for the plaintiff, PATTERSON AND PATTERSON, P.O. Box 663, Aberdeen, Mississippi 39730, and BROWDY AND NEIMARK, Munsey Building, Washington, D.C. 20004, by first class mail, postage prepaid, this        day of May, 1976.

---

Encl 4/13  
 4.7.  
 8/11-74

IN THE UNITED STATES PATENT OFFICE

In re Application of: )  
 )  
 Paul W. MICHELS et al. ) Group 242  
 )  
 Serial No. 350,746 ) Examiner R. Pons  
 )  
 Filed: April 13, 1973 )  
 )  
 For: METHOD FOR PREPARING NON- )  
 PERISHABLE SHAPED MEAT PRO- )  
 DUCTS, THE MEAT PRODUCTS )  
 OBTAINED THEREBY AND APPARA- )  
 TUS FOR CARRYING OUT )

November 5, 1974

AMENDMENT

Hon. Commissioner of Patents  
 Washington, D. C. 20231

Sir:

Responsive to the Official Action of July 5,  
 1974, please amend as follows:

IN THE SPECIFICATION:

Page 1, line 14, after "over" insert --the apparatus  
disclosed in--;

line 15, after "1969," insert -- now Patent  
No. 3,775,134--;

line 19, delete "non-perishable";  
 line 24, delete "non-perishable" and insert  
 therefor --cured--.

Page 2, line 6, delete "application 835,235" and  
 insert therefor --No. 3,775,134--;

line 10, delete "It appears that in" and  
 insert therefor --In--; same line, delete "now and then";

EXHIBIT 4



Page 2, line 11, after "treatment" insert --may not

and then--;

line 13, delete "is" and insert therefor

--may be--;

line 14, delete "till" and insert therefor

--until--;

line 22, delete "number of" and insert  
therefor --rate of speed--;

line 23, delete "revolutions";

line 24, delete "measurably" and insert  
therefor --substantially--;

line 25, after "method" insert --using  
prior apparatus--;

line 30, after "method" insert --using prior  
apparatus--.

Page 3, line 2, after "qualities" insert a comma;  
same line, delete "till" and insert therefor --until--;

line 4, delete "specification";

line 8, after "method" insert --of patent  
No. 3,775,134--;

line 9, delete "resolve into" and insert  
therefor --result in--;

line 12, delete "application 835,235" and  
insert therefor --No. 3,775,134--;

line 15, delete "of" and insert therefor  
--from--; same line, after "rind", insert a comma;

line 19, delete "till" and insert therefor  
--until--;

Page 3, line 20, after method insert --using prior apparatus--; same line, delete "application 835,235" and insert therefor --No. 3,775,134.

line 21, after "provides" insert --an apparatus for carrying out--;

line 22, delete "non-perishable" and insert therefor --cured--;

line 25, delete "thus treated" and insert therefor --stirred--;

line 28, delete "at the same time" and insert therefor --simultaneously--

Page 4, line 1, after "embodiment" insert a comma;

line 27, delete "the".

Page 5, line 2, after "rind" insert a comma

lines 8 and 9, delete "In- stead thereof" and insert therefor --alternatively--

line 11, delete "whereafter they are" and insert therefor --and then--; same line, delete the comma and insert therefor a semi-colon; same line, delete "after" and insert therefor --the product may be sliced before packing--;

line 12, delete "slicing";

line 14, delete "as is";

line 15, delete "application Serial No. 835,235" and insert therefor --No. 3,775,134--;

line 17, before "have" insert --should--; same line, delete "such"; same line after "shaft" insert --such--.

Page 6, line 5, delete "wall" and insert therefor --walls--;



Page 6, line 6, after "shown" insert a comma;

line 11, after "edges" insert a comma;

Page 7, line 2, delete "usual up till now" and  
insert therefor --in the prior art--;

line 9, after "about" insert a comma; same  
line, after "they" insert --are--; same line, after "approximately"  
delete "are";

line 23, delete "appeared" and insert there-  
for --appears--;

line 24, delete "were" and insert therefor  
--are--;

line 28, delete "savingsly treated" and  
insert therefor --treated gently--;

line 30, delete "application 835,235" and  
insert therefor --patent No. 3,775,134--; same line, delete  
"the improved";

line 31, before "method" insert --such--;  
same line after "method" insert --using the improved apparatus--.

Page 8, line 2, after "this" insert --better--;

line 4, delete "measurable" and insert  
therefor --substantial--;

line 5, delete "application 835,235" and  
insert therefor --patent No. 3,775,134--;

line 6, delete "the improved process described  
herein" and insert therefor --such process using the improved  
apparatus described herein.

#### IN THE CLAIMS:

Delete claim 5 and insert therefor new claim 11  
as follows:

11. ~~Apparatus for the treatment of meat products~~

comprising:

a rectangular container with rounded edges;

stirring means for subjecting all of the meat chunks retained in said container to a stirring movement, said stirring means comprising:

a stirring shaft,

stirring blade means connected to said shaft for simultaneously imparting both a horizontal and a vertical component of movement to the meat chunks being stirred, and

drive means connected to said stirring shaft for supplying sufficient power to said shaft to cause said stirring blade means to impart horizontal and vertical components of movement to chunks of meat filling said container; and

support means connected to said stirring means for supporting said stirring means such that said stirring shaft

and said stirring blade means are suspended within said container.

(Insert new claim 12 as follows:)

*Bx* 12. An apparatus in accordance with claim ~~11~~ wherein said stirring means is for subjecting meat chunks retained in said container to a stirring movement of an intensity insufficient to substantially raise the temperature of the meat but sufficient to cause the meat chunks to exude a tacky exudate, and said drive means is for supplying sufficient power to said shaft to cause said stirring <sup>blades</sup> ~~blade means~~ to impart horizontal and vertical component of movement to chunks of meat filling said container at a velocity in sufficient to substantially raise the temperature of the meat.

Claim 6, line 1, delete "5" and insert therefor --11--; same line after "said" insert --stirring--; same



line, after "blade" insert --means--.

Claim 7, line 1, delete "5" and insert therefor --11--;

line 2, delete "blades" and insert therefor

--blade means--;

line 3, after "said" insert --stirring--.

Claim 8, line 1, delete "5" and insert therefor --11--;

line 2, delete "is" and insert therefor--

means comprises stirring blades.

Claim 9, line 1, delete "5" and insert therefor --8--;

line 2, delete "blade is" and insert therefor

--blades are--.

(Amend claim 10 as follows:)

~~10 (amended) Apparatus in accordance with claim 11,~~

11, wherein said stirring blade means comprises a stirring blade,  
the side surfaces of [said stirring blade] which acts to impart  
said vertical component of movement to the stirred material.

Delete claims 1-4 without prejudice towards the filing  
of a divisional application.

# R E M A R K S

Claims 6-12 presently appear in this case. No  
claims have been allowed. The Official Action of July 5, 1974  
and the references cited therein have now been carefully studied.  
Reconsideration and allowance are hereby respectfully urged.

Briefly, the present invention relates to an apparatus  
for stirring chunks of meat which has an improved configuration  
which allows the meat to be treated faster and more completely  
than with prior art meat treating apparatus. The stirring blades  
of the present apparatus simultaneously impart both a horizontal

and a vertical component of movement to the meat chunks being stirred and the drive means which drives the stirring blades must have sufficient power to cause the stirring blades to cause the movement of the chunks of meat filling the container in which the stirring takes place.

Claims 5-10 have been rejected under 35 USC 103 over Liebman. The Examiner states that it is obvious to use Liebman's device for the agitation of meat products. The Examiner states that the recitation in claim 6 of an alternative mixing blade shape amounts to nothing more than a choice of mechanical design. This rejection is respectfully traversed.

The Liebman reference relates to an apparatus for mixing fluids and particularly to a bearing support for a vertical agitating shaft. The drawings show stirring blades at various heights on the vertical shaft and being curved. The Examiner apparently takes the position that the blades will cause a simultaneous horizontal and vertical component of movement to the fluid being stirred. It is submitted, however, that it would not be obvious to use Liebman's device for the agitation of meat products. Nothin in Liebman or the other reference of record teaches or suggests anything about the equivalency of mixing devices for fluids and mixing devices for solids. The design considerations for each are completely different. Those of ordinary skill in the art involved in the design of stirrers for solid products such as chunks of meat would not believe that the refinements in the design of stirring devices could be learned from stirring blades known per se only for stirring liquids.



Claim 11 now specifically recites that the container is rectangular with rounded edges. This is not taught by either of the references of record. Furthermore, the stirring means is recited as a means plus function, the function being subjecting all of the meat chunks retained in the container into a stirring movement. Furthermore, the drive means connected to the stirring shaft must supply sufficient power to the shaft to cause the stirring blade means to impart horizontal and vertical components of motion to chunks of meat filling the container. It is submitted that the simple drive means of Liebman and Staaf are not designed to be sufficiently powerful to stir solid meat chunks within the container. Any motor merely designed for the simple stirring of fluid will not be able to stir solid meats and would have to be made substantially more powerful.

It is submitted that those of ordinary skill in the art reading Liebman would know of absolutely no reason to make the motor more powerful nor would they know of any reason to use such an apparatus for stirring meat. The Examiner has given no reason why he considers it obvious to use Liebman's device in the agitation of meat products. The expressed purpose of the particular shaped blades of Liebman is set forth on Column 2, lines 23-27 where it is stated that the blades have a reverse pitch to increase the mixing action of the fluid which may be contained in the tank. The present invention is not concerned with mixing action of fluids, but solely with the slow stirring of meat in which the meat is subjected to both a horizontal and a vertical component of movement.

Furthermore, all of the meat chunks retained in the

container must be subjected to this stirring movement. It is c that the little short blades of Liebman which do not even extend half the radius of the container could not cause a stirring of all the meat in the container even if the container were filled with meat. Similarly, the Staaf stirrer is even less apt for the stirring of meat as it contains only a single blade of a very sma radius. The whole purpose of Staaf is to control the flow of fluid being stirred. There would be absolutely no reason to use the design of Staaf for the stirring of anything but fluids. Since there is no purpose disclosed or known for using the particular shaped blades disclosed in either Liebman or Staaf for the stirring of meat and since the particular advantages of the shapes of the blades disclosed by Liebman and Staaf would not be achieved when stirring meat but can only be achieved when stirring fluids, it is submitted that the use of blades of this shape is far from obvious and that the Examiner must come up with reasons why he would consider it obvious. Those reasons must be known to the prior art. No such reasons appear or are suggested in either of the references of record.

With regard to claim 6, the Examiner states that an alternative mixing blade shape amounts to nothing more than a choice of mechanical design. It is submitted, however, that this type of rejection has long been considered improper by the Board of Appeals. One cannot have a choice of mechanical design when the Examiner has not provided any prior art from which a choice can be made. Clearly, the Examiner has cited no prior art which teaches a stirring arm of the shape disclosed in claim 6.



The case of Ex parte Haas, 114 USPQ 98,99 states:

The Examiner then says that these are a matter of choice. It is not a matter of choice presented by the prior art. The prior art gives only one choice; . . . Thus, one of ordinary skill in the art, turning to the prior art to make his choice, would never arrive at the claimed process.

Similarly, the case of Ex parte Dore, 118 USPQ 541, 544 speaks of an examiner's rejection with the language "is not seen to provide a patentable distinction, being no more than a matter of choice." The Board stated:

Why he so holds he does not say and we do not see particularly since only the disclosure of the instant case makes a "choice" available.

See also Ex parte Krantz, 61 USPQ 238.

Here, as in the above quoted cases, the Examiner has not documented any prior art from which a choice could be made. Furthermore, the present specification on page 7, lines 24-26 points out an improvement due to the shape of the stirring blades claimed. Therein it is pointed out that the meat pieces are at the same time exposed to radial forces so that the stirring is even more intensified. This is an important improvement over the shape of blades disclosed in the prior art cited by the Examiner. Accordingly, it is submitted that this rejection is improper. Reconsideration and withdrawal of this rejection is therefore respectfully urged.

The Examiner has cited Staaf as being a reference to a mixing device. This reference has also been discussed hereinabove and the inapplicability thereof has been made clear.


The Examiner has made the election of the claims of

Group II final and has withdrawn claims 1-4 from consideration as unreadable on the claimed invention. Claims 1-4 have now been deleted without prejudice towards the filing of a divisional application.

Accordingly, it is submitted that all the claims now present in the case clearly define over the references of record. Reconsideration and allowance are, therefore, earnestly solicited.

Respectfully submitted,

BROWDY AND NEWMARK  
Attorneys for Applicants

By   
Reg # 25,618

(202) 628-5197



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

MEAT SYSTEMS CORPORATION,	:	
Plaintiff,	:	
vs.	:	
BEN LANGEN-MOL, INC., a New York	:	
corporation, HOMBURG, B.V., and	:	
KNUD SIMONSEN INDUSTRIES, LTD.,	:	
Defendants,	:	75 CIV. 5306 (WK)
and	:	
BEN LANGEN-MOL, INC., a Delaware	:	AFFIDAVIT OF STEPHEN ZITIN
corporation,	:	
Applicant for Intervention,	:	
and	:	
CARL ADILETTI and STEPHEN ZITIN,	:	
Additional Defendants	:	
on Counterclaim.	:	

-----X

STATE OF NEW JERSEY:  
: SS:  
COUNTY OF U N I O N:

I, STEPHEN ZITIN, being duly sworn, depose and say as follows:

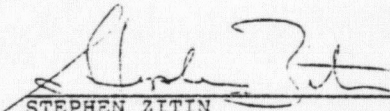
1. I am the Stephen Zitin referred to in the Affidavit of Ben G. Langen submitted in support of the ORDER TO SHOW CAUSE FOR INTERVENTION AND PRELIMINARY INJUNCTION filed by Ben Langen-Mol, Inc., a Delaware corporation.

2. Attached hereto as Exhibit A is a copy of a letter dated February 18, 1976, from Lerner, David, Littenberg & Samuel, attorneys for Meat Systems, to Raymond W. Gass, Esq., attorney for John Morrell & Company.

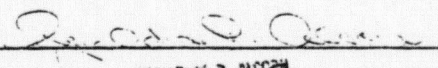
3. Attached hereto as Exhibit B is a copy of a letter dated March 12, 1976, sent from Lerner, David, Littenberg & Samuel, Meat Systems' attorneys, to Raymond W. Gass, Esq., attorney for John Morrell & Company.

4. Attached hereto as Exhibit C is a copy of a portion of the purchase order issued by John Morrell & Company to Meat Systems Corporation for the purchase of meat massagers, including arm designs described in Schedule B thereof, corresponding to the arm design which was attached to the letter of March 12, 1976, from Lerner, David, Littenberg & Samuel to Raymond W. Gass, Esq., identified as Exhibit B heretofore.

5. All meat massagers presently being sold by Meat Systems Corporation include the arm design shown on the Morrell purchase order of Exhibit C, and include the units which are being shipped to Garland Food Corporation of Dallas, Texas, as well as all units which will be shipped in the future.

  
STEPHEN ZITIN

Sworn and Subscribed to  
before me this 26th day  
of July, 1976.

  
GERALDINE R. ALCON  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires June 30, 1979



February 13, 1976

Raymond W. Gass, Esq.  
John Morrell & Company  
Suite 1910  
203 S. LaSalle Street  
Chicago, Illinois 60604

Re: Our file: MSC 6.1-001  
Meat Systems Corp. vs. Ben Langan-Mol, et al

Dear Mr. Gass:

Confirming our conversation of today, and as you requested, I am enclosing a copy of the transcript of the deposition of Michael Bonner taken on January 12, 1976. Also, with respect to the missing exhibits you mentioned to Bill Mantlik, I would make the following comments:

- Exhibit 16 - Brochure
- Exhibit 23 - Identified but not produced
- Exhibit 43 - USDA directory of poultry and meat processors - too thick to reproduce
- Exhibit 44 - List of companies - identified but not produced
- Exhibit 45 - Identified but not produced
- Exhibit 46 - Payroll authorization form which bears no relationship to the subject.

I am also enclosing a photograph of the Meat Systems unit from which you can clearly see that the top surface of each of the paddles is not flat. To the contrary, the top (and bottom) surface is prismatic in configuration, inclining upwardly to a center line at an angle of approximately 5° to 10° from the

EXHIBIT A

Raymond W. Gass, Esq.  
February 18, 1976  
Page 2

true horizontal. We also have a specimen of the paddle at our office and can forward it to you if you desire.

As I also indicated, our associate in Washington has finally tracked down the file wrapper history, and it is being forwarded. As you requested, as soon as a copy is received, I will forward same to your office.

Finally, let me repeat that Meat Systems has authorized our office to extend the offer of a suitable hold harmless to your company in connection with the purchase of meat massagers from our client. Moreover, because of the extremely limited nature of the claims which have issued in U.S. Patent 3,934,850, not only are we confident that the existing Meat Systems structure does not infringe this patent, but we can also offer to provide you with a redesigned paddle which will even more clearly avoid infringement and, at the same time, fully satisfy your company's needs. As we discussed, there are many obvious paddle configurations which will clearly avoid the limitations of the patent claims.

If we can be of any further service in connection with your review of this matter, please do not hesitate to contact us. If it will simplify matters, we can correspond directly with your outside patent firm.

Sincerely yours,

LERNER, DAVID, LITTENBERG & SAMUEL

SIDNEY DAVID

SD:ga

cc: Mr. S. H. Zitin



March 12, 1976

Raymond W. Gass, Esq.  
John Morrell & Company  
Suite 1910  
208 S. LaSalle Street  
Chicago, Illinois 60604

Re: Meat Systems Corporation

Dear Mr. Gass:

As I indicated during recent discussions, Meat Systems has redesigned the wings used in its massagers to make it 100% clear that Meat Systems' meat massagers will not infringe the claims of U.S. Patent 3,934,860.

Enclosed please find a drawing showing the revised Meat Systems wing design. As you can see, this wing is not diamond-shaped as specifically required by the one and only independent claim of the recent Homburg patent. Moreover, as pointed out in the following analysis, that particular shape was argued by the Homburg attorneys to be the critical feature when they sought allowance of the patent in the Patent Office. Under the well-established doctrine of file wrapper estoppel, they would be absolutely barred from contending that the new Meat Systems design infringes their patent.

THE CLAIMS OF U.S. PATENT 3,964,060

There are only two claims in this patent, independent Claim 1 and dependent Claim 2. Dependent Claim 2, of course, includes all of the limitations of Claim 1.

The significant limitation in Claim 1 is

" . . . each of said blades comprising a body which is symmetrical relative to its longitudinal axis and has flat upper and lower

EXHIBIT B

Raymond W. Cass, Esq.  
March 12, 1975  
Page 2

surfaces and rounded side walls, said rounded side walls causing horizontal and vertical components of movement of the meat chunks, the horizontal width of the blade perpendicular to its longitudinal axis first increasing, starting from the shaft up to a maximum substantially at half the radial blade length and thereafter decreasing again, and . . .

This, of course, defines a diamond-shaped plan view as shown in Figure 4 of the patent.

THE FILE WRAPPER HISTORY  
OF U.S. PATENT 3,964,860

During the prosecution, the Examiner had rejected original Claim 6 (specifying the diamond shape) on the basis that the shape was nothing more than a mere choice of mechanical design (i.e., did not amount to patentable invention).

The applicant argued against the Examiner's rejection and during his arguments made the following remarks.

"Briefly, the present invention relates to an apparatus for the treatment of meat products by stirring. . . . The blades are of substantially a diamond shape attached at one end to the shaft and having rounded side walls.

\* \* \* \*

"Since the embodiment of Figures 3 and 4 is now the only embodiment being claimed, the issue is whether or not those of ordinary skill in the art at the time the present invention was made having the Liebman and Wright references before him would have considered the specific diamond shaped blade as shown in Figure 4 and as claimed in Claim 11 to be nothing more than a choice of mechanical design. . . .

\* \* \* \*



Raymond W. Gass, Esq.  
March 12, 1976  
Page 3

"The Examiner's attention is respectfully drawn to the present specification, page 7, lines 22-23, where it is stated:

'It appears that with this embodiment of the stirring means the most favorable results are attained. The meat pieces are thereby at the same time exposed to radial forces so that the stirring is even more intensified. Nevertheless, the rounded portions of the blade bodies insure mild engagement with the meat pieces so that they will be treated gently.'

"It can thus be seen that the specific shape of the blades is not merely randomly arrived at and is not merely ornamental, but serves a valid and important purpose which would not be obvious from any reading of Liebman and Wright. The diamond shape of the blade allows not only horizontal and vertical motion but also radial forces from the blade to the side of the container which is important to intensify the massaging action on the meat."

7) It is clear that the limitation in the claim that specifies that the horizontal width of the blade first increase, starting from the shaft up to a maximum substantially at half the radial blade length, and thereafter decreasing again (the diamond shape), was critical in convincing the Examiner of the allowability of the claim. Under the traditional doctrine of file wrapper estoppel, the patentee is estopped from attempting to argue that that shape is of no significance.

#### MEAT SYSTEMS' NEW DESIGN

As shown in the drawing, the width of the blade starts out at the narrowest point at the shaft, reaches its maximum point at approximately midlength or so, and then continues that width to the very end. I call this a baseball bat configuration. Clearly, it is not a diamond shape. It would not literally infringe the claims of the patent, nor could it be argued to be an equivalent because of the file wrapper arguments which were advanced by the attorney in obtaining the patent in the first place.

Raymond W. Gass, Esq.  
March 12, 1976  
Page 4

In summary, Meat Systems' new design is obviously clear of any possible claim of infringement of U.S. Patent 3,964,860 by Homburg.

Should you have any questions with respect to the above, or require any further information in order to evaluate this infringement question, please feel free to contact me.

Sincerely yours,

LENER, DAVID, LITTENBERG & SAMUEL

SIDNEY DAVID

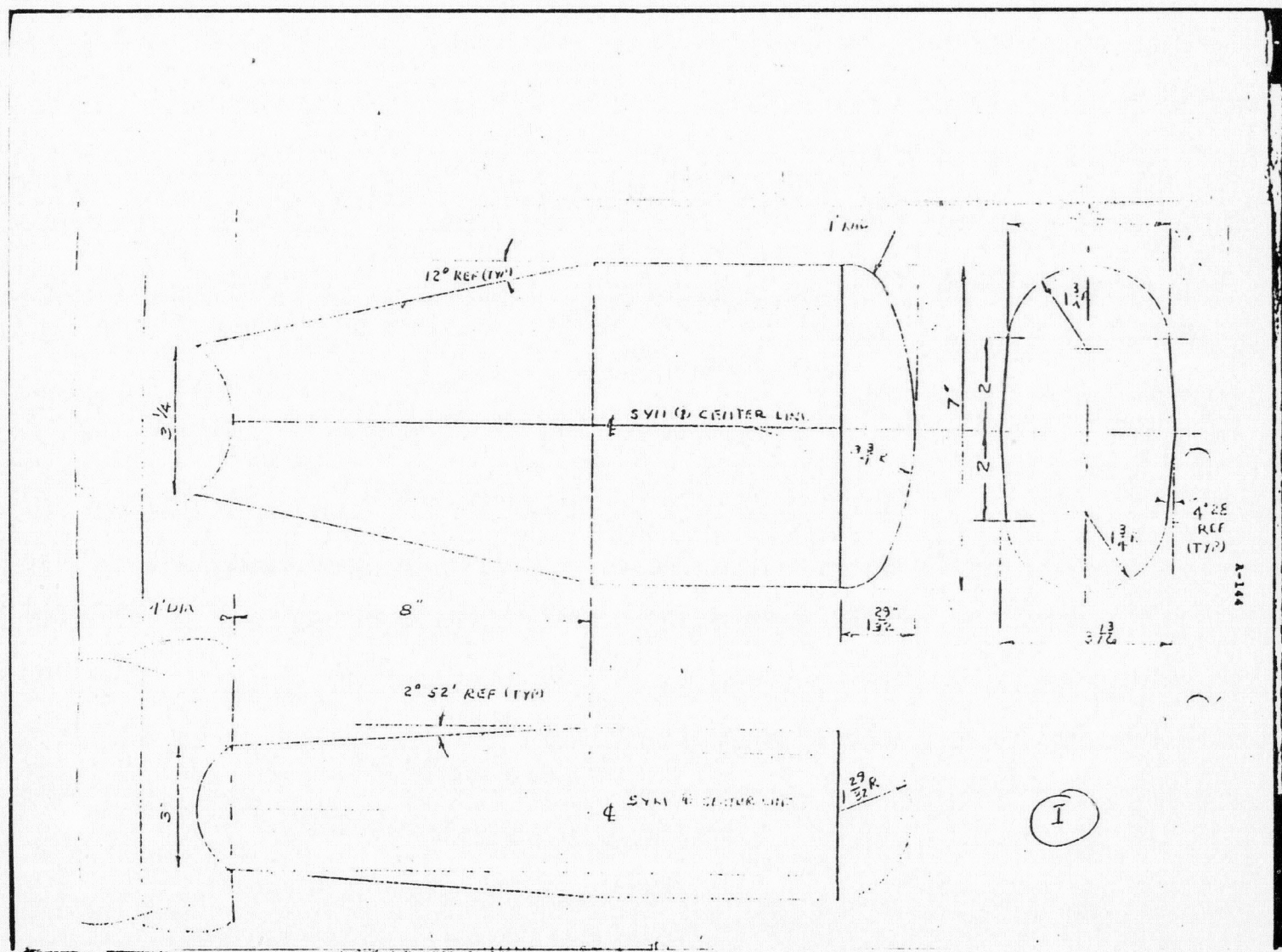
SD:ga

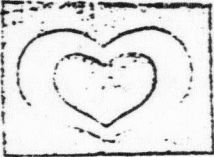
Enclosures

cc: Mr. S. H. Zitin  
Mr. Carl Adiletti

P.S. - For your convenience, I am enclosing the relevant portions of the file wrapper of U.S. Patent 3,964,860 which refer to the shape of the blade.







JOHN J MORRELL &amp; CO.

208 S. LA SALLE

CHICAGO, ILL. 60604

TELEPHONE 312 442-1000

FAMOUS

FOR MEATS

SINCE 1827

No.

REFERENCE SHOULD BE MADE TO ORDER NUMBER WHEN ACKNOWLEDGING RECEIPT OF ORDER OR IN ANY CORRESPONDENCE

DATE July 9, 1976

SHIP TO various locations to be specified by separate letter.

Meat Systems Corp.  
Box C 122  
Cinnaminson, New Jersey 08077

INVOICE TO John Morrell & Co.  
208 So. La Salle St.  
Chicago, Illinois 60604

• DUPLICATE INVOICE TO

PLEASE ENTER OUR ORDER FOR THE FOLLOWING

TERMS	F.O.B. POINT	SHIP VIA	TO ARRIVE
below	below	Morrell trucks or common carrier	see below
QUANTITY	DESCRIPTION		PRICE
130 units	<p>Meat Massager &amp; Curing System Model MC 4 or 9/16, including controls, of the type described in Schedule A, with the revised arm design described in Schedule B. (hereinafter called "product", "Machines" or "units").</p> <p>Sales taxes are responsibility of Morrell.</p> <p>Shipment Dates: 20 units by 7/23/76; 10 units by 8/6/76; 10 units by 8/13/76; 30 units by 9/3/76; and 10 units thereafter until a total of 130 units have been shipped. <i>WEEKLY</i></p> <p>Terms - net 10 days after delivery of Machines, subject to retainage per Schedule C.</p> <p>Terms and conditions of sale are noted on reverse side hereof and on Schedules C and D.</p>		\$4,000.00
DATE <del>BY</del>		Accepted: Meat Systems, Inc.	
		BY <i>[Signature]</i>	

REQN. No.

DEPT. No.

JOHN MORRELL &amp; CO.

IMPORTANT: This offer to purchase is made only on the express condition that Seller accepts all the terms and conditions on the reverse side of the Purchase Order.

BY

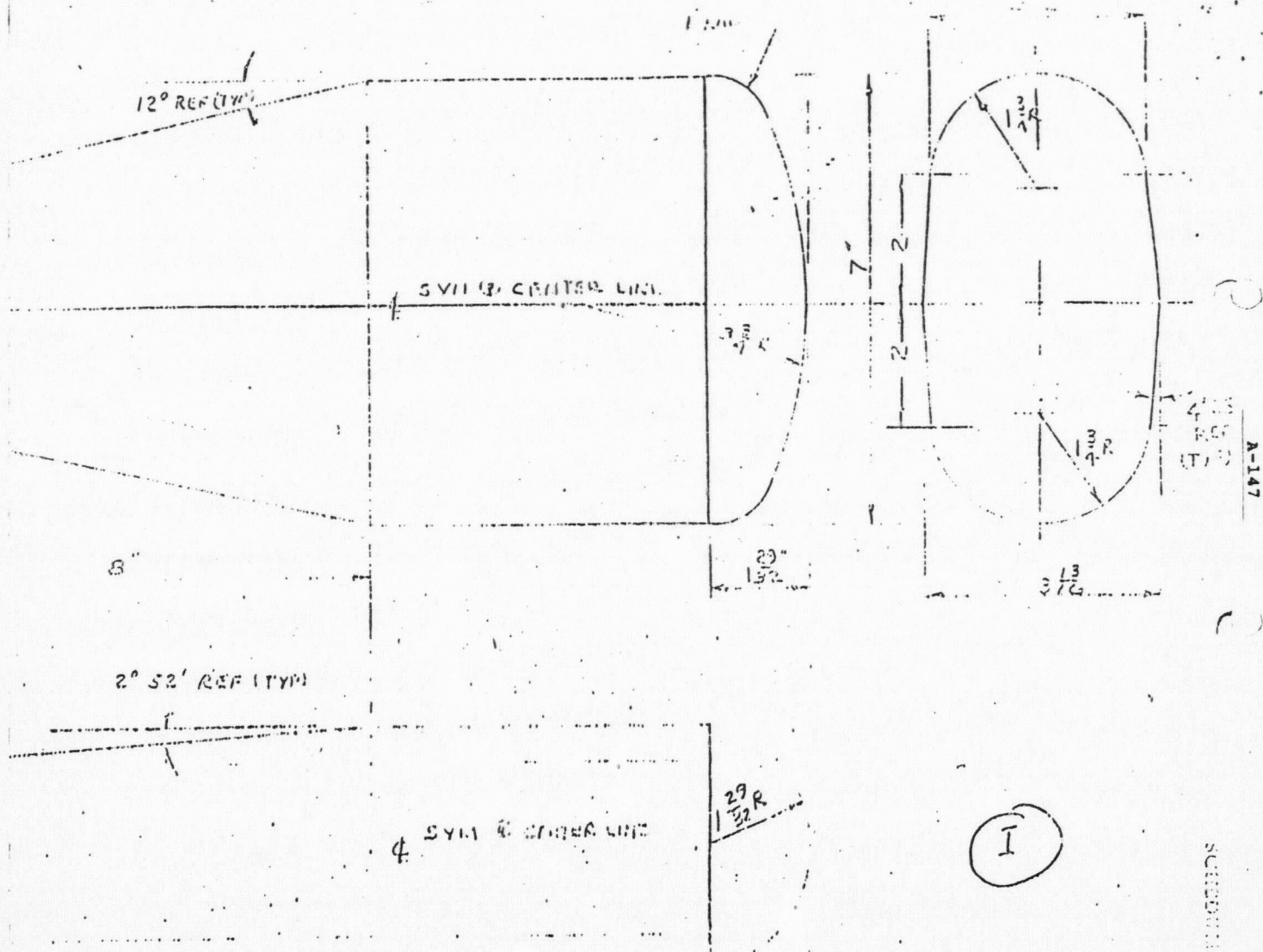
EXHIBIT C.



## TERMS AND CONDITIONS OF PURCHASE

1. **CONTRACT:** This purchase order, together with any documents expressly incorporated herein by reference, constitutes the entire agreement between the parties. No modification of or addition to this purchase order shall be effected by any acknowledgment form or other documents submitted by Seller containing additional or different terms or conditions. Neither party shall claim any modification, amendment or release from any of the terms or conditions contained herein except by mutual agreement to that effect, signed by Seller and an authorized representative of Morrell.
2. **TAXES:** Unless expressly provided on the reverse side hereof, all taxes on the production, delivery, or sale of the product shall be paid by Seller.
3. **LOWER COMPETITIVE PRICE:** If Morrell determines that a product of comparable quantity and quality is available at a lower price than provided herein, Morrell shall notify Seller of such lower price prior to shipment and Seller shall then elect to supply the product at such lower price or permit Morrell to purchase the product elsewhere. The quantity so purchased shall be deducted from this agreement. If Seller's price for the product to any customer in a comparable market area falls below the price herein, Morrell shall receive the benefit of such lower price.
4. **FORCE MAJEURE:** Neither party shall be liable for failure or delay in the shipment or acceptance of the product if prevented by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which this agreement was made or by compliance in good faith with any applicable governmental regulation, whether valid or invalid. In such an event, Morrell may require Seller to allocate his available supply of product to Morrell on a nondiscriminatory basis with other customers of Seller. At the option of Morrell, any quantity not shipped as scheduled shall be deducted from the total quantity purchased by Morrell or rescheduled for late delivery.
5. **WARRANTY:** Seller warrants that the product will be merchantable, be free from all defects of material and workmanship, and conform to the description; that Seller will convey good title thereto; that the product will be delivered free from any security interest or other lien or encumbrance. If the product is made according to Seller's design, Seller warrants that the product will be fit for the purposes intended by Morrell. Seller shall be liable for all damages resulting from a breach of any of these warranties or any other term or condition of this agreement.
6. **PATENTS:** Seller shall indemnify and save Morrell harmless from any liability, loss, damage, judgment or award, including costs and expense, arising out of any claims or suits for infringement of patents purporting to cover the product or its normal intended use. Seller shall at his own expense defend Morrell in such claims or suits provided Morrell shall give Seller prompt notice in writing of such claims or suits and shall supply at Seller's expense all needed information.
7. **INSPECTION:** The product is subject to Morrell's inspection and approval within a reasonable time after delivery. Morrell, without prejudice to any other rights or remedies, shall have the right to reject defective product and, at Seller's expense, return it to Seller or dispose of it according to Seller's instructions.
8. **COMPLIANCE WITH LAWS:** Seller shall comply with all federal, state and local laws and regulations applicable to the production, sale and delivery of the product. Seller certifies that the product is produced in compliance with Fair Labor Standards Act of 1938, the President's Executive Order 11246, Section 202, relating to Equal Employment Opportunity (which section is incorporated herein by reference) and with the Williams-Steiger Occupational Safety and Health Act of 1970, and all regulations and amendments to any of these laws.
9. **APPLICABLE LAW:** This agreement shall be interpreted and governed according to the laws of the State of Illinois.







CERTIFICATE OF SERVICE

I hereby certify that a true copy of the within  
MEMORANDUM IN OPPOSITION TO THE MOTION OF BEN LANGEN-MOL, INC., a  
DELAWARE CORPORATION, TO INTERVENE AND FOR PRELIMINARY INJUNCTION  
and AFFIDAVITS OF SIDNEY DAVID and STEPHEN ZITIN in support  
thereof, was served upon the attorneys for the defendants:

Brooks, Haidt, Haffner & Delahunty  
99 Park Avenue  
New York, New York 10016  
[Attorneys for Knud Simonsen Industries, Ltd.]

Browdy and Neimark  
Munsey Building  
Washington, D.C. 20004  
and  
Robert W. Fiddler, Esq.  
3424 Empire State Building  
New York, New York 10001  
[Attorneys for Homburg B.V.]

by first class mail, postage prepaid, this 26th day of July, 1976,  
and BY HAND DELIVERY this 26th day of July, 1976 to:

Howard G. Kristol, Esq.  
Reboul, MacMurray, Hewitt, Maynard & Kristol  
75 Rockefeller Plaza  
New York, New York 10019  
[Attorneys for Ben Langen-Mol, Inc.].

*Carol Taylor*  
~~Linda Wankar~~  
Carol Taylor

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

MEAT SYSTEMS CORPORATION,	:	
	:	
Plaintiff,	:	
	:	
-against-	:	
BEN LANGEN-MOL, INC., a New York	:	
corporation, HOMBURG, B.V. and	:	
KNUD SIMONSEN INDUSTRIES LTD.,	:	
	:	
Defendants,	:	75 Civ. 5306 (WK)
	:	
-and-	:	NOTICE OF APPEAL
BEN LANGEN-MOL, INC., a Delaware	:	
corporation,	:	
	:	
Applicant for Intervention,	:	
	:	
-and-	:	
CARL ADILETTI and STEPHEN ZITIN,	:	
	:	
Additional Defendants	:	
on Counterclaim.	:	

----- x

PLEASE TAKE NOTICE that applicant for intervention Ben Langen-Mol, Inc., a Delaware corporation, hereby appeals to the United States Court of Appeals for the Second Circuit from each and every part of an order entered in this action on July 27, 1976, denying its motion (1) pursuant to Rule 24(a) of the Federal Rules of Civil Procedure, for leave to intervene as a party defendant in this action and serve its answer and counterclaims to the amended complaint herein; and (2) pursuant to Rule 65(a) of the Federal Rules of Civil Procedure, for preliminary injunctive relief with respect to

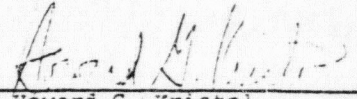


the first and second counterclaims set forth in its proposed answer and counterclaims.

Dated: New York, New York  
July 28, 1976

REBOUL, MacMURRAY, HEWITT, MAYNARD  
& KRISTOL

By

  
Howard G. Kristol  
A member of the firm  
Attorneys for Ben Langen-Mol,  
Inc., a Delaware corporation,  
Applicant for Intervention  
75 Rockefeller Plaza  
New York, New York 10019  
212-541-6310

TO:

Bell, Wolkowitz, Beckman & Klee  
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New York, New York 10022  
and  
Lerner, David, Littenberg & Samuel  
A Professional Corporation  
195 Elm Street  
Westfield, New Jersey 07090

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Attorneys for Defendant Homburg B.V.

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99 Park Avenue  
New York, New York 10016

Attorneys for Defendant  
Knud Simonsen Industries Ltd.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MEAT SYSTEMS CORPORATION,  
Plaintiff,  
-against-

BEN LANGEN-MOL, INC., a New York  
corporation, HOMBURG B.V. and  
KNUD SIMONSEN INDUSTRIES LTD.,  
Defendants,

-and-

BEN LANGEN-MOL, INC., a Delaware  
corporation, Applicant for  
Intervention,

-and-

CARL ADILETTI and STEPHEN IITIN,  
Additional Defendants on  
Counterclaim.

ORDER TO SHOW CAUSE  
FOR INTERVENTION AND  
PRELIMINARY INJUNCTION

REBOUL, MACMURRAY, HEWITT,  
MAYNARD & KRISTOL

Attorneys for Applicant for  
Intervention

75 ROCKEFELLER PLAZA  
NEW YORK, NEW YORK 10019  
(212) 541-6310

Copy Received  
Bernard H. Miller

7/23/76

5:30 P.M.

Due and timely service hereby  
acknowledged

Brosdy & Winkler

Attorneys for Defendant Homburg B.V.  
Sheridan Norman Hox

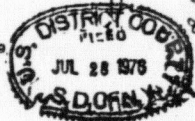
Copy Received 7-26-76  
Brosdy & Winkler  
Homburg B.V.

JUL 26 1976

Motions denied on the ground  
of laches for the reasons stated on the  
record on July 27, 1976, without  
prejudice to renewal of the motions  
to intervene on regular notice  
of motion.

So ordered

U.S.D.J.  
July 28, 1976



A-148C

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

-----x  
MEAT SYSTEMS CORP., :

Plaintiff,

-v- :

75 Civ. 5306

BEN LANGEN-MOL, INC., (N.Y.), HOMBURG,  
B.V., KNUD SIMONSEN INDUSTRIES, LTD.,  
CARL ADILETTI and STEPHEN ZITIN, :Defendants.  
-----xJuly 27, 1976  
11:30 A.M.

B E F O R E :

HON. WHITMAN KNAPP,

District Judge.

A P P E A R A N C E S :

LERNER, DAVID, LITTENBERG & SAMUEL, ESQS.,  
Attorneys for Meat Systems Corp.,  
Carl Adiletti and Stephen Zitin  
SIDNEY DAVID, ESQ.  
WILLIAM MENTLIK, ESQ.,

of Counsel

SHERIDAN NEIMARK, ESQ.  
Attorney for Defendant Homburg, B.V.REBOUL, MAC MURRAY, HEWITT, MAYNARD & KRISTOL, ESQS.,  
Attorneys for Intervenor Ben Langen-Mol, Inc.  
(New York and Delaware)HOWARD G. KRISTOL, ESQ.  
J. JOSEPH BAINTON, ESQ.,

of Counsel

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2 THE COURT: Who is the moving party.

3 MR. KRISTOL: Ben Langen.

4 THE COURT: Why did you bring an order  
5 to show cause when you have known for six months at least  
6 the situation exists?

7 MR. KRISTOL: Your Honor, that isn't accurate  
8 at all.

9 As the affidavit of Mr. Langen who is with me  
10 today indicates, only within the last several days --

11 THE COURT: Six months you have known you  
12 have had these rights. Only in the last seven days did  
13 they start to threaten you. But you have known the  
14 situation existed at least since you got the patent.

15 MR. KRISTOL: The patent was issued in  
16 January, not in December.

17 My client, Ben Langen-Mol, Delaware, acquired  
18 the business of Ben Langen New York in 1975.

19 In December 1975, the 860 patent issued.  
20 At that time Homburg, B.V., the defendant --

21 THE COURT: Why didn't you move then?

22 MR. KRISTOL: We didn't know about these  
23 substantial orders until the last couple of days.

24 THE COURT: You knew the danger was there.  
25 Why didn't you move? Why did you come in with an order to



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show cause on five minutes notice?

MR. KRISTOL: Your Honor, I think it is a calculation of expenses versus benefits.

THE COURT: Well, you made your first mistake. I am denying your motion on the grounds of laches without prejudice to renewing it on proper notice this September.

You made a miscalculation. You cannot come in with an order to show cause, whip up everybody up here in five minutes when you have known the situation since January.

He has these rights, and obviously he is going to exercise them.

MR. KRISTOL: There is a question of whether or not an infringement is occurring. There is a question--

THE COURT: You are going to move to intervene certainly at that point.

MR. KRISTOL: We could have moved to intervene and the plaintiff knowing about the change in rights as between Ben Langen-Mol New York and Ben Langen Delaware could have moved to adjoin us as an additional defendant.

THE COURT: If you want to be in, it is up to you to get in.

MR. KRISTOL: We had no need, your Honor, to move for leave to intervene until a situation arose which

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2 threatened irreparable loss and harm to my client. At  
3 no prior time were we in a position to make the kind of  
4 showing we can make now. If we had come in on the day after  
5 the patent issued, we wouldn't have had anyone to sue.

6 THE COURT: You could have intervened.

7 MR. KRISTOL: But having intervened, your  
8 Honor, that wouldn't have cured anything.

9 Your Honor, we have prepared a memorandum which  
10 is being put in final form and will be down here within a  
11 few minutes. I hoped to have it at the beginning of the  
12 hearing and not at the conclusion, which indicates that  
13 under the existing case law, our application to intervene  
14 and I leave aside the application for preliminary injunction  
15 is timely. Issue has not yet been joined.

16 THE COURT: I am not arguing the application  
17 to intervene. It may be timely, but you do not do it on a  
18 two-day notice of an order to show cause.

19 MR. KRISTOL: I can apologize for that, your  
20 Honor, but it really isn't our fault. We did not seek  
21 a temporary restraining order. We did not ask Judge Conner  
22 to set this down for hearing on two or three days notice.  
23 I think it is unfortunate that it was set down on that  
24 basis. However, the harm is in fact threatened and it is  
25 important that this matter be heard and that the application



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2 for preliminary injunction be considered.

3           However, I will agree with your Honor that it  
4 is unfortunate and to some extent unfair that the time  
5 period be compressed in this fashion. However, I think  
6 your Honor has to appreciate that my client didn't have any  
7 basis for moving for a preliminary injunction so far as  
8 making a proper showing of irreparable harm is concerned  
9 until the last several days as the affidavit indicates.

10           I don't see why my client should be prejudiced  
11 now when it didn't have the grounds upon which to make the  
12 motion back in January.

13           MR. DAVID:     Your Honor, we have been previous  
14 admitted to the Court for purposes of this case in connection  
15 with the motion by Homburg to be dismissed for lack of  
16 jurisdiction.

17           By the way, I think the record should indicate  
18 that counsel for Homburg is sitting in on this conference.

19           The point that I wanted to make is that we  
20 have been in competition since at least December. We  
21 have been competing in the field January, February, March,  
22 April, May, June, July. We have taken orders, they have  
23 gotten orders, we have been competing together for seven  
24 months and for Mr. Kristol to say that he has not known of  
25 a possibility of irreparable harm when six months of open

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2 competition has been known in the industry, I think is a  
3 misstatement of the facts.

4 THE COURT: "In or about November 1975, we  
5 learned of several such sales and promptly brought that  
6 information to the attention of Homburg which was contractu-  
7 ally obligated to prosecute infringers of the patents."

8 MR. DAVID: We have been open and notorious  
9 in our sales, your Honor.

10 MR. KRISTOL: We brought to the attention of  
11 Homburg; apparently Mr. David now finds it convenient to  
12 concede that in fact irreparable harm has been done.

13 MR. DAVID: We have been selling. He hasn't  
14 been telling us he has been selling. We of course --

15 THE COURT: You knew about it.

16 MR. KRISTOL: We knew that Meat System  
17 and the affidavit shows that if nothing else, that Meat  
18 System was selling a machine, a copy of our machine we  
19 say, in competition with us.

20 THE COURT: Why is that?

21 MR. KRISTOL: Under our agreement with Homburg,  
22 B.V., we notified Homburg of that fact and then Homburg took  
23 the laboring law in bringing infringement.

24 THE COURT: Why didn't they take the laboring  
25 law here?



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2 MR. KRISTOL: That is why we are here, your  
3 Honor. Homburg, B.V. has moved to dismiss this action on  
4 jurisdictional grounds as you will recall, your Honor.  
5 Homburg wants to get out of this case.

6 It is necessary from my client's point of view  
7 to now seek relief on its own behalf. It is not controlled  
8 by Homburg, B.V. They are independent companies. We have  
9 not had the occasion --

10 THE COURT: You knew that they were selling  
11 in November of '75.

12 MR. KRISTOL: They sold some machines. That's  
13 right.

14 THE COURT: What is the difference between  
15 December '75 and now?

16 MR. KRISTOL: The difference is we are talking  
17 about essentially the order involving the Morell Company,  
18 an order that my company has been working on for over two  
19 years, has spent countless thousands of dollars developing  
20 which it believed it had secured and which if it had obtained  
21 would represent a fifty percent increase in sales.

22 THE COURT: That is a question of size, but  
23 you could have brought this motion in November of '75.

24 MR. KRISTOL: Your Honor, when we found out  
25 that Meat Systems had sold a machine, we could have moved

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2 for a preliminary injunction then.

3 THE COURT: That is right.

4 MR. KRISTOL: We did not believe at that  
5 time that we could make the showing of irreparable harm.  
6 We are talking about minor sales, your Honor. We are talk-  
7 ing about minor sales. Also we were talking --

8 THE COURT: But if they are selling, if you  
9 have a right to an injunction for patent infringement which  
10 is another question; you can enjoin one. They could have  
11 done it then.

12 MR. KRISTOL: How much expense would a  
13 party rationally incur to try to establish an abstract  
14 legal right.

15 THE COURT: It is not abstract legal right.  
16 You know they are competing with you. You know the only  
17 thing that is holding them back is their success and the  
18 quicker you establish it, you have got the right to do it.

19 MR. KRISTOL: We have the right to present a  
20 motion. Of course, any party has that right at any time.

21 THE COURT: But you had exactly as much right  
22 then as you have now.

23 MR. KRISTOL: No, your Honor, the circumstances  
24 are different. There is certainly a difference between  
25 my right to protect my property and my right to get a



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2 preliminary injunction based on someone's threatening to  
3 destroy that property. That is the situation we have got  
4 today.

5 For the first time, we have, I think, a clear  
6 showing of irreparable harm arising from the infringement.

7 THE COURT: What is the difference between  
8 then and now? Just quantity?

9 MR. KRISTOL: The question of irreparable  
10 harm, the ability to get injunctive relief. That is what  
11 this motion is all about.

12 My client has not suddenly decided to spend  
13 money unless the circumstances were such to warrant the  
14 making of this extraordinary application.

15 MR. DAVIDP: Your Honor, if I may.

16 Mr. Kristol took depositions of Mr. Adiletti  
17 in December. In January he learned about companies who he  
18 sold to, Homburg sent letters to our customers charging  
19 them with infringement, telling them that they had to take  
20 a license.

21 Our sales in the industry have been open,  
22 notorious. Everybody sitting at this table has known about  
23 it for at least, I think, seven months if not longer. For  
24 the movant to come in now and --

25 THE COURT: You claim you have the right to

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2 do this.

3 MR. DAVID: Of course we do, and we rely  
4 on this acquiescence. One doesn't come before the Court  
5 and say irreparable harm eight months after the occurrence  
6 of the incidents. On **detrimental reliance on that**  
7 kind of inactivity, you have got Ben Langen-Mol not taking  
8 any rights. You have the patentee contesting jurisdiction.  
9 I told my client there is no way they are going to get a  
10 preliminary injunction and my client has gone out and  
11 contracted with more companies and spent more money and  
12 in the traditional estoppel relying on the kind of inactivity  
13 that the Court is referring to.

14 That is exactly what is before the Court  
15 now and I think the Court was properly so when it came out  
16 in the first question and said, "What have you been doing  
17 for seven months while they have been spending money develop-  
18 ing their business?"

19 That is precisely my point, that the Court is  
20 proper.

21 MR. KRISTOL: I don't see **how** Mr. David can  
22 say acquiescence when his firm has been involved in defending  
23 two of the plaintiff's customers in the patent infringement  
24 cases brought in two districts in the south alleging patent  
25 infringement.



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2           There has been no acquiescence that I know of  
3 in sales of infringing equipment by the plaintiff. The  
4 only thing that has happened is that my client has found  
5 it necessary now to bring on this application at the source,  
6 attacking directly Meat Systems for selling the equipment.

7           The two cases in the south are meandering along.  
8 The agreement between my client and Homburg, B.V. provides  
9 that Homburg will prosecute infringers of the patent, that  
10 is part of the arrangement, the royalty. We pay royalties  
11 to the owner of the patent. The patent owner is supposed  
12 to proceed against infringers of the patent.

13           Under the present circumstances, we have not  
14 been able to persuade Homburg, B.V. to bring this kind of  
15 application because they are moving to dismiss for lack of  
16 jurisdiction.

17           If the motion that had been presented had been  
18 granted months ago, then presumably Ben Langen-Mol, New  
19 York and then Ben Langen-Mol, **Delaware**, would have been  
20 left in this case and we would have taken up the  
21 against the plaintiff Meat Systems Corporation at an  
22 appropriate time.

23           We simply had no occasion in the past to bring  
24 this kind of application for extraordinary relief and our  
25 concern is as our motion papers show, that unless the relief

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2 is granted, Ben Langen-Mol, **Delaware**, will be unable to  
3 compete effectively by **reason** of what we claim to be un-  
4 lawful conduct by the plaintiff, and that it is going to  
5 be driven out of business.

6 When you consider the fact that the Morell  
7 order would represent a fifty percent increase in annual  
8 sales standing by itself, I think you get some idea of the  
9 magnitude and importance of the Morell order.

10 And by the way, your Honor, all of the state-  
11 ments contained in the Langen affidavit about the conduct  
12 of Mr. Adiletti and Mr. Zitin in relation to Mr. Adiletti's  
13 employment by Ben Langen-Mol, New York, none of that is  
14 denied in any of the answering affidavits that were sub-  
15 mitted, nor were any of the allegations.

16 THE COURT: They claim they had the right to  
17 do whatever they did, I assume.

18 MR. DAVID: Two further points, your Honor.

19 MR. KRISTOL: I am not now referring to the  
20 patent infringement claims, I am talking about the misuse  
21 of confidential information.

22 The fact that Mr. Adiletti was employed for  
23 a year as the national sales manager of Ben Langen-Mol,  
24 New York, had access to the customers' lists, had access  
25 to all the technology relating to the device, entered into



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2 negotiations to set up Meat Systems Corporation with Mr.  
3 Zitin while he was still an employee of Ben Langen-Mol,  
4 New York.

5 THE COURT: You have known this for a long  
6 time.

7 MR. KRISTOL: That is correct, but the 860  
8 patent which is the heart of the application, that was not  
9 issued until the latter part of January of this year.

10 THE COURT: That is a long time ago.

11 MR. DAVID: Your Honor, I think what it boils  
12 down to is first of all there is a trial date set for the  
13 patent infringement issue in West Point, Mississippi for  
14 December 19th, so the fact that it is meandering along is  
15 not quite an accurate statement.

16 Secondly, I think what this whole thing  
17 boils down to, is that there has been an inter-company  
18 squabble it appears, between the patentee Homburg and their  
19 licensee Ben Langen.

20 Ben Langen has not been able to convince  
21 Homburg to come in here and fight, and what Mr. Kristol  
22 is suggesting is that we should be prejudiced because he  
23 couldn't convince Mr. Neimark to come to this Court and  
24 get a preliminary injunction seven months ago.

25 We have been in notorious competition for seven

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2 months, and we are doing pretty well. We have a couple of  
3 nice orders, and now they decide it is about time. It is  
4 a cry baby type situation. They could have moved as you  
5 said seven months ago. They thought we were going to dis-  
6 appear and they didn't have to spend the money to make a  
7 preliminary injunction motion.

8 Now we get a big order, so they get a prelimin-  
9 ary injunction motion. I think it is too late. If they  
10 thought they could have had a showing they should have  
11 moved and not lull us into a sense of security so far as  
12 preliminary relief was concerned.

13 To even get a preliminary injunction in this  
14 Circuit under Carter Wallace in this Circuit, Judge Dooling  
15 was reversed by the Second Circuit in that case and said  
16 that preliminary injunctions cannot be granted in patent  
17 cases unless there has been a prior holding of validity and  
18 unless the infringement and validity are beyond question  
19 and in acquiescence in the industry.

20 If there is anything further from that  
21 criteria in this case, I have never seen it. There has  
22 never been a prior holding of validity. The only showing  
23 of validity is by someone who is not a patent attorney  
24 vis-a-vis opinion letters of counsel, that there is no  
25 infringement. There is no possibility of granting it, Judge.



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2 They don't have any showing except for an  
3 opinion of a non-patent attorney, of a non-attorney.

4 THE COURT: Under Judge Friendly you have  
5 to have a prior adjudication or acquiescence.

6 MR. KRISTOL: Your Honor, the Carter Wallace  
7 case, there is a subsequent decision in Carter Wallace  
8 decided under the name of Carter Wallace v. Otte, being  
9 the original defendant for Davis-Edward Pharmaceuticals.

10 This is a memorandum I have, your Honor.  
11 It is not a sine qua non of getting a preliminary injunction  
12 that there had been a prior adjudication.

13 MR. DAVID: They haven't made a prima facie  
14 case out of infringement let alone validity. This is  
15 ridiculous on one day's notice they put an affidavit in to  
16 the president of the company, that there is infringement  
17 without even an opinion of a patent attorney.

18 My co-counsel reminds me that we have been  
19 arguing the high burden in patent cases which is Carter  
20 Wallace.

21 In addition, that there has to be a showing  
22 of likelihood of success which isn't even a showing on the  
23 record.

24 Why is this any different?

25 MR. KRISTOL: The Carter Wallace decision,

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2 the earlier decision which was cited in plaintiff's brief,  
3 indicates that whether there is a genuine disputed issue of  
4 fact, then a preliminary injunction should not issue unless  
5 there has been either a prior adjudication or the validity  
6 has been long accepted in the industry.

7 THE COURT: Except when the question, patent  
8 is beyond question valid and infringed.

9 How can you say that?

10 MR. KRISTOL: Your Honor, I respectfully  
11 submit that it is beyond any question that this patent is  
12 valid and it is beyond question that the Meat Systems  
13 machine, both the earlier machine and the so-called new  
14 machine or modified machine that they have got --

15 THE COURT: How do you say beyond question that  
16 it is valid?

17 MR. KRISTOL: Your Honor, there hasn't been  
18 any showing of invalidity. There hasn't been any suggestion  
19 of any fact that would possibly render this patent invalid.

20 In the answering papers the plaintiff has put  
21 in, has referred to twenty-three patents which they say show  
22 prior art. They don't tell your Honor anything about what  
23 those patents contain and how they relate to this particular  
24 patent.

25 We have listed some of them in our memorandum



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2 which indicates that they deal with such things as spark  
3 plugs and a variety of other devices. They don't read on  
4 the particular invention involved in this case. They  
5 have no relation to it.

6 The only three arguably relevant patents  
7 involved are those three patents that are specifically  
8 referred to in the patent itself and were considered by  
9 the Patent Office. The plaintiff, although the plaintiff  
10 says of course, well, there is no doubt that the patent is  
11 invalid, prior art, the typical defense of a patent  
12 infringer, what have they shown in their papers in terms of  
13 raising a genuine issue of fact in relation to the validity  
14 of the patent?

15 They haven't done anything that I think your  
16 Honor can find in their papers that would tend to overcome  
17 the presumption of validity.

18 The other point I want to make, your Honor,  
19 is that so far as infringement is concerned, we respectfully  
20 submit that their machine, both old and new, is squarely  
21 within the claims of the 860 patent and that their machine,  
22 both old and new, infringes.

23 MR. DAVID: What evidence is there of that?  
24 Any testimony? Mr. Langen is not even a patent attorney  
25 to talk about claims of a patent.

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2 How come we don't have a hearing, which takes  
3 a month of trial and expert testimony and mechanical  
4 engineers and patent opinion experts and you are going to  
5 get a preliminary injunction on the affidavit of the  
6 president of the company who has offered no testimony what-  
7 soever with respect to the issue of what a patent claim  
8 means?

9 MR. KRISTOL: Mr. David, I have not been  
10 admitted to the high priesthood of the patent bar either.

11 THE COURT: Unfortunately neither have I.

12 MR. KRISTOL: I think your Honor, that I can  
13 read the claims of a patent as can this Court.

14 THE COURT: Don't put yourself in this class  
15 in my respect, you will regret it.

16 MR. DAVID: If the Court would consider the  
17 history and consider the arguments that were advanced by  
18 file wrapper estoppel.

19 THE COURT: I know nothing about patents.

20 MR. KRISTOL: Your Honor, I want to repeat  
21 a question that Mr. Langen put to me.

22 Mr. Langen says what does he know about  
23 patents?

24 THE COURT: More than I do.

25 MR. KRISTOL: He spent years. He is a co-owner



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of the patent. I suspect he does know something valuable about the patents and the invention. But he asked me this question.

He said to me, "Howard, how can a company work for years on an invention, do development work, do sales preparation work, ultimately get patents and sell the device, and then an employee of the company having gained all that knowledge one day without notice resigns and sets up a competing business, sells a machine that is an exact copy of the machine I sell and get any help in the U.S. courts?"

THE COURT: He can get help in the U.S. courts if he got promptly after these facts were laid before you which was latest in December or late January.

MR. KRISTOL: Your Honor, if we had come in in January, Mr. David would have been here and say long acquiescence in the industry. They can't say a preliminary injunction.

THE COURT: Then we would have litigated that point at some leisure and we would have found out whether you would get it or not.

Your motion is denied on the ground of laches without prejudice to bring an appropriate motion for intervention on appropriate notice.

MR. DAVID: Thank you, your Honor.

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